NEWS

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549
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Remarks to the
Seminar on the European Business World
and the Extraterritorial Application of
United States Economic Regulation
Zurich, Switzerland
September 24, 1982

TOWARD NEUTRAL PRINCIPLES OF INTERNATIONAL SECURITIES REGULATION

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Toward Neutral Principles of International Securities Regulation

Today I plan to talk about an ordering by common goals in the field of international securities regulation. I will:

First, rehearse the evidence of growing internationalization of the securities markets and the corresponding need for an ordering by common goals;

Second, comment on efforts to harmonize the national regulation of international securities transactions;

Third, suggest a number of neutral principles that appear to have been generally accepted among many nations; and

Fourth, as a case study, look at the SEC approach to transnational dealings, first in the past, to gain some historical perspective, and then with regard to current issues.

Evidence of the Growing Internationalization of the Securities Markets

To comment on the growing internationalization of the securities markets is something of a commonplace -- and has been for at least a decade. But by almost any measure, the trend is accelerating. For example:

1. American investments in foreign securities rose from $19.6 billion in 1971 to $62.1 billion by 1981, while foreign investment in U.S. securities rose from $25.6 billion to $74 billion over the same 10-year period.

2. Over the same decade, transactions by American investors in foreign securities increased by more than 700%, while transactions by foreign investors in U.S. securities increased by more than 600%.

3. Foreign issuers with securities trading in the U.S. under an exemption from our filing requirements have more than doubled since 1979, while foreign securities and ADRs listed on NASDAQ -- the automated quotation system for the over-the-counter market -- rose from 99 to 256 over the same period.

The views expressed in this speech are my own and do not necessarily represent those of the Commission, my fellow Commissioners or the staff.

4. While U.S. investors were diversifying into foreign securities, foreigners were acquiring an increasing ownership stake in U.S. broker-dealers. In this year alone:

   - A Middle Eastern group bought 25% of Smith Barney Harris Upham & Co.;
   - S. G. Warburg & Company, a London merchant bank, and Compagnie Financiere de Paris et de Pays Bas, a Paris firm, increased their joint ownership of Warburg Paribas Becker-A.G. Becker, Inc. to over 50%;
   - Mercantile House Holdings of London, a currency broker, acquired Oppenheimer & Company; and
   - Saudi Arabian interests increased their ownership of Donaldson, Lufkin & Jenrette to 24%.

5. Multinational corporations are raising capital throughout the world. Of the dozen largest issuers in the U.S. public debt market, half are also among the top dozen in the dollar-denominated Eurobond market. As George L. Ball, formerly of E. F. Hutton and now with the Bache securities unit of Prudential Life Insurance Company, said recently:

   > "U.S. companies are raising money in Japan, Germany and the U.S. interchangeably. They don't view national boundaries as being borders of any sort. They are looking for the best value regardless of nation of origin."

   U.S. corporate borrowing on the new international bond market in 1982 is running at triple the 1981 level for the first seven months of each year.

With the growing internationalization of the securities markets has come increased governmental efforts to apply national laws to transnational dealings. This phenomenon should come as no surprise. It is both further evidence of the trend and a logical reaction to it. As a nation's domestic markets become increasingly employed by foreign suppliers and users of capital, the application of its domestic laws to those foreigners becomes more compelling.

With securities such as IBM trading around the clock, by investors from around the world, on the stock exchanges of Japan, Austria, Switzerland, Germany, France, the Netherlands, England, Canada and the United States (among others), it becomes obvious that the legitimate interests of many nations are implicated and extend beyond their territorial boundaries. Indeed, advances in communications have rendered traditional notions of "extraterritoriality" about as useful a tool for developing law and policy as semaphore is for signaling in modern warfare. The question can no longer be one of whether a nation's laws should extend beyond its boundaries. We must ask how best to accommodate the legitimate application of the laws of various nations to transactions that significantly touch them all.

Transnational dealings in securities are of legitimate concern to the Securities and Exchange Commission if they materially affect U.S. citizens, U.S. corporations or U.S. securities markets. Efforts by the Commission to investigate such dealings and enforce the U.S. securities laws have necessarily implicated persons outside the U.S. and the laws of other nations.

Of course, the U.S. is not the only nation to apply its laws to transnational dealings. Canada's Foreign Investment Review Act, for example, requires governmental approval of a merger of two foreign corporations if the effect is to transfer control of a Canadian subsidiary, no matter how insignificant to the total enterprise. Closer to Zurich, the Commission of the European Communities, in proposed directive No. 7 would require non-European parents of European corporations to publish consolidated financial statements disclosing non-European activities. And the European Commission's so-called "Vredeling proposal" would compel a non-European parent of a European subsidiary to furnish to the subsidiary, for disclosure to its employees, advance notice of certain corporate decisions likely to have a substantial effect on those employees. Such matters as closure or transfer of plants, change in business or firm organization and joint venture projects with others would be covered.

Protectionist reactions to jurisdictional extensions of this sort are not uncommon. The business secrecy and blocking laws of many of our major trading partners illustrate the point. So too does the "Protection of Confidential Business Information Act," a bill introduced into both Houses of Congress in 1981 as a "knee jerk" reaction to these blocking laws and the recent disclosure proposals of the European Commission. Under this bill, the SEC could issue protective orders to block disclosure of confidential business information mandated by foreign law.

To recognize that protectionist reactions are human, and thus understandable, is not to condone them. They have the effect of a crowd standing on tip-toe to see the parade. Protectionism is a fool's game. Ultimately, it leads to paralysis. Instead of an international ordering by reciprocity of this sort, I want to urge upon you today the need for an ordering by common goals in the field of international securities regulation.

Efforts to Harmonize Regulation of International Securities Transactions

Efforts abound both to improve the national regulation of transnational securities dealings and to harmonize the regulatory approaches of different nations. There is no shortage of groups active in the field. They include, for example, the Organisation for Economic Co-operation and Development, the Commission of the European Communities, the Inter-American Conference of Securities Commissions and Similar Organizations, the International Accounting Standards Committee, the International Federation of Accountants, the UN Commission on Transnational Corporations and ad hoc conferences such as the 1981 Conference on the Internationalization of the Capital Markets, held in New York City.

Despite these multiple efforts, there have been calls for more. At the 1981 Conference, then SEC Chairman Harold Williams and Lee Spencer, the current Director of the Commission's Division of Corporation Finance, recommended the establishment of an International Committee of Securities Regulators. Informal at first, with the function of exchanging information and promoting the harmonization of national regulations, this committee was seen ultimately as evolving, through multi-lateral treaty, into an entity much like the Commission of the European Communities, with power to issue directives binding on the signatories as to results, but with the method of implementation subject to the discretion of the signatories.

I share the Williams-Spencer view that their proposal, if implemented, would not be redundant. We should seek, wherever possible, to establish mechanisms capable of spawning cooperation in securities regulation. For the near-term, I see a growing need to have regular meetings of an informal and relatively small group of securities regulators from different nations. One model for such a group to follow would be the Basle Committee on Banking Regulations and Supervisory Practices. This committee has achieved a considerable success in developing co-operation among banking supervisory authorities over the seven years it has functioned, meeting regularly about three times a year.

Another model would be the one developed under the aegis of the Commission of the European Communities. In 1977 the EEC recommended to its member states, for voluntary adoption, a European Code of Conduct Relating to Transactions in Transferable Securities (the "EEC Code"). I understand that the EEC Code has been largely implemented by the member states, with the exception of the provisions on insider trading. Thus, all member states have designated supervisory authorities to monitor implementation of the Code at the national level, and representatives of these authorities meet once a year with EEC staff to evaluate the Code and review its implementation among the member states.

These are significant organizational steps. They stem from a shared belief among the member states that common rules are needed in order effectively to regulate transnational dealings in securities. They deserve to be emulated on a broader scale, in recognition of the global sweep of securities transactions.

Now, let me be more specific. I urge the securities regulators of Switzerland and of other European countries to join with us, and with regulators of other nations having active markets and common problems, in organizing a committee chartered for the following purposes:

(a) the exchange of information,

(b) the establishment of neutral principles for international securities regulation,

(c) the identification of specific issues of common concern and importance, and

(d) the development of solutions to those issues through application of the shared principles.

The returns to those involved, and to the capital markets of the world, could be substantial. W. Peter Cooke, Chairman of the Basle Committee, in evaluating its work, said that perhaps the most important role of the Committee was as a forum "for the establishment of personal contacts which has led to practical continuing collaboration outside the confines of the committees in an atmosphere of mutual confidence and trust both in routine matters and in individual problem cases.

Specific issues of common concern that might be taken up by this committee at an early date would include tender offer regulation, identification of beneficial ownership, disclosure standards, broker-dealer registration and accounting and auditing standards.

The Evolution of Neutral Principles

Out of the efforts of the organizations just mentioned, one can identify some neutral principles worth considering as tools for the resolution of specific transnational issues. By "neutral," I mean principles which are applicable equally, and without bias, to the regulation of capital markets, wherever situated.

In searching for neutral principles, I found it useful to review (a) the Declaration on International Investment and Multinational Enterprises of the OECD Council (adopted in 1976), (b) the EEC Code (adopted in 1977), and (c) the Sixth Directive as to stock exchange listing requirements of the Council of the European Communities (adopted in 1980), as well as the various resolutions of the Inter-American Conference of Securities Commissions and Similar Organizations and the premises of the U.S. Securities Act and Securities Exchange Act. These documents suggest the existence among nations of a shared belief in at least the following eight principles:

1. Healthy capital markets (i.e. markets creating the best possible conditions for matching supply and demand for capital) are essential to capital formation.

2. The foundation of healthy capital markets is public confidence.

3. Fairness and honesty in the conduct of capital market transactions are essential to foster public confidence.

4. Issuers of securities should make publicly available, on a timely basis, all information capable of having an appreciable effect on the price of the securities or the investor's decision to buy, sell or hold the securities or exercise important rights relating to the securities.

5. There should be reasonably free and equal competition among suppliers and users of capital, both within individual markets and among all markets.

6. Each nation should strive to accord to foreign-owned entities seeking access to its capital markets as a supplier or user of capital, or as a financial intermediary with respect thereto, treatment no less favorable than that accorded in like situations to domestic entities.

7. Financial intermediaries stand in the position of fiduciaries to their clients and, as such, are subject to the duties of loyalty and of care in rendering their services.

8. Each nation should harmonize and coordinate the laws and regulations governing its capital markets with the laws and regulations of other nations, so as to minimize the cost to capital suppliers and users of operating in and among different capital markets.

Obviously, these principles do not readily provide solutions to all the tough problems. They provide no blueprint, for example, to resolve the question of which of two nations' laws will prevail where they appear equally applicable to the same transnational event but call for dramatically different outcomes. But what is remarkable to me, and highly encouraging, is the discovery of so many shared goals, among so many nations, in the field of securities regulation. Much could be accomplished, I submit, through the committee structure earlier recommended, using a "top down" approach to problem solving, with these principles as the initial set of tools.

At this point I should like to celebrate the superb example of bilateral cooperation reflected in the memorandum of understanding between the governments of Switzerland and the United States, regarding problems of insider trading. This agreement, together with the related private agreement of the Swiss Bankers' Association, demonstrates the unwillingness of the Swiss to allow their bank secrecy laws to be used to shield persons who are illegally trading in the U.S. securities markets on the basis of inside information.

In fashioning these agreements, the Swiss government and its bankers have taken a bold, imaginative and important position. They have assumed a leadership role in the field of international cooperation. They have established a benchmark for others to follow. All those involved in this effort should take pride in their achievements. I salute them for a job exceedingly well done.

A Case Study: the SEC Approach -- Historical Perspective and Current Issues

I want now to turn to the SEC, which some of the time has been viewed by some of the people here in Europe as, among other things, overly zealous in rulemaking and investigations, overly assertive in extending its jurisdiction and possibly a touch arrogant about its wisdom in matters of securities regulation. I thought it might be instructive, as a case study, to

look at the SEC approach to issues of international securities regulation. I will first sketch out a brief history of the SEC's treatment of foreign issuers using our domestic securities markets. I will then discuss some current issues, seeking where possible to illustrate how the neutral principles can be applied to specific problems.

A Brief History. In framing the securities laws, Congress made no firm decisions about the treatment of foreign private securities, granting broad discretion to the Commission to evolve an appropriate set of rules. In the exercise of that discretion, the Commission has a long history of accommodating at least some of its rules to facilitate the use of domestic securities markets by foreign issuers.

In the U.S., securities regulation operates under two major statutes, the Securities Act of 1933 and the Securities Exchange Act of 1934. The Securities Act deals with the public distribution of securities by corporations, domestic or foreign, while the Exchange Act imposes reporting and other requirements on the corporations, once a minimum level of public ownership of their securities has been reached. While foreign corporations traditionally have been treated substantially the same as domestic corporations under the Securities Act, substantial deference to foreign ways has been shown in applying the Exchange Act. For example:

1. Registration under the Exchange Act.

   (a) Registration and annual report forms for foreign securities under the Exchange Act, adopted in 1935 and in effect for the next 32 years, required minimal disclosure compared to the forms for domestic securities, permitting, for example, the use of uncertified financial statements.

   (b) In 1967, these forms were changed to require certified financial statements, and they remained in effect until the adoption of Form 20-F in 1979.

   (c) When, in 1964, Congress required unlisted securities traded over-the-counter to be registered, the Commission exempted foreign securities, subject only to the filing with the Commission of materials required to be made public in the country of domicile or incorporation or made public by a foreign stock exchange or distributed to security holders. English translations of these materials were not required.

2. Proxy and Short-Swing Profit Rules.

Since 1935, foreign issuers have been exempt from provisions of the Securities Exchange Act dealing with the solicitation of proxies and the reporting and disgorgement by officers, directors and significant stockholders of short-swing trading profits.

3. Current and Periodic Reports.

(a) Foreign issuers always have been exempt from requirements to file current reports of significant events (adopted for domestic issuers in 1936), quarterly revenues (adopted for domestic issuers in 1946), semi-annual reports of revenues, income and changes in retained earnings (adopted for domestic issuers in 1955) and quarterly financial statements (adopted for domestic issuers in 1970);

(b) In 1967, for the first time, the Commission required (in Form 6-K) registered foreign issuers to file materials required to be made public in their country of domicile or incorporation or made public by a foreign stock exchange or distributed to security holders. But again, no English translation of these materials was required.

4. Due Diligence

Broker-dealers publishing quotations for foreign securities are exempt from a requirement that, as a matter of due diligence, they have in their files specified current information concerning the issuer.

5. Form 20-F.

Even with the adoption of Form 20-F in 1979, intended to impose upon foreign issuers substantially the same disclosure requirements imposed on domestic issuers under the Exchange Act, many accommodations were made in deference to foreign laws and customs. For example:

(a) Disclosure of individual remuneration for principal officers is not required, unless otherwise made public.

(b) Disclosure of material transactions between management and the issuer is not required, unless otherwise made public.

(c) A 6-month filing period is permitted rather than the 3-month period applicable to domestic issuers.

(d) Segment reporting by industry and geographic region is limited to revenues only, to be accompanied by a narrative discussion if revenue and profit contributions differ significantly.

(e) English translations of Form 6-K materials are now required, but only for information sent to shareholders and material press releases.

(f) The signature of only one representative is required.

As this survey shows, until the adoption of Form 20-F just three years ago, the Commission treated foreign issuers very differently from domestic issuers under the Exchange Act. If this constituted a benign neglect, it was in no way unconscious. Great care was given to considerations of international law and comity, foreign sovereignty and the welfare of international business. By 1973 a special unit -- the Office of International Corporate Finance -- had been set up with Carl T. Bodolus as chief. In announcing this office, then Chairman William Casey observed that there was a need to plan now, rather than react later, with respect to the growing internationalization of the capital markets and securities business. (Incidentally, both the office and Mr. Bodolus will soon enjoy their tenth anniversary, suggesting a level of continuity, consistency and concern not always found in the Washington bureaucracy.)

In March of this year the Commission completed for domestic corporations its two year effort to integrate the Securities Act with the Exchange Act. Given the extensive nature of the periodic disclosure provided and the fact that security analysts closely followed actively traded securities, it had become obvious that much of the disclosure required upon a public offering of securities was redundant. The result of this effort was a major revision of the rules under the two Acts, combining and streamlining them into a single intelligent system that elicits the required information in a timely, coherent and cost-conscious way.

The Commission is now considering how best to achieve an integrated disclosure system for foreign issuers. An important, and threshold, policy question arises out of the difference between the requirements of Form 20-F, adopted in 1979 under the Exchange Act, and the more rigorous requirements of the Securities Act. Should the Commission integrate the two Acts for foreign issuers by using the Form 20-F standards, which

presumably were deemed adequate to protect investors active in the secondary markets? Should it stick to the Securities Act standards now applicable to domestic issuers? Or should it seek some in-between point of balance? I will return to this question.

Some Current Issues. I now want to turn to some current issues we face at the Commission. In discussing them, I will try, where possible, to illustrate how the neutral principles identified earlier can be applied to help solve specific problems.

1. Application of broker-dealer registration, financial responsibility, record-keeping and other regulatory provisions of the Exchange Act to foreign banks and broker dealers in respect of business with U.S. clients

Most foreign banks probably come within the Exchange Act's definition of the term "broker" because they purchase and sell securities as agent for their customers. Foreign banks do not qualify for the bank exclusion from the definition of "broker." Accordingly, they could be subject to the broker-dealer registration requirement of the Exchange Act if they use the mails or any instrumentality of interstate commerce to effect securities transactions.

Policy considerations have led the Commission to believe that, as a general rule of thumb, we should not apply the broker-dealer registration requirements to foreign banks and brokers unless their securities activities have a significant nexus with U.S. citizens, U.S. securities or U.S. securities markets. This view draws support from the neutral principles of national treatment, of free and equal competition among suppliers and users of capital, and of the need to harmonize and coordinate our laws with those of other nations.

Absent such a nexus, I believe the Commission should borrow from our state laws, for application to transnational dealings, the corporate "internal affairs doctrine." This is a conflicts of law concept based on the recognition that a corporation would be greatly hampered in conducting its affairs if, by doing business in more than one state, it subjected itself to multiple and possibly inconsistent laws governing its internal relationships and activities.

Now, applying this rule of thumb, a foreign bank that solicits U.S. citizens in this country to buy foreign or domestic securities must register. Business done with U.S. citizens abroad where there is no nexus to the U.S. other than the citizenship of the customer would not invite application of

the federal securities laws. We would simply not think of reaching out under these circumstances, nor would our jurisdictional concepts permit us to do so. If a foreign bank solicits U.S. customers abroad, additional supporting facts, such as that the bank or broker is U.S. owned or that the transaction will be executed in the U.S., would probably be necessary before registration should be required.

In some situations, the foreign bank does not actively solicit U.S. customers but such customers maintain accounts with the bank, and may use the bank to place orders to buy or sell securities. Those orders may be executed in U.S. securities markets, using U.S. brokers. We understand that the banks generally do not hold themselves out as broker-dealers in the U.S. or particularly to U.S. citizens abroad. Accordingly, the Commission has not asserted that foreign banks performing that service must register.

It should be noted that the application of the Commission's comprehensive broker-dealer regulatory system to conduct by foreign banks raises different policy issues than the application of our general antifraud provisions. The Commission's system for regulating broker-dealers governs rather extensively their internal operations. Here, in line with the principle of harmonization and coordination, the Commission has applied something akin to the internal affairs doctrine, in the absence of a strong nexus to vital U.S. interests. In contrast, the antifraud rules apply only in particular circumstances where there is injury to U.S. investors or U.S. markets; they do not represent, on an on-going basis, a pervasive intrusion into the business operations of a foreign bank.

2. Application of anti-fraud provisions of the Exchange Act to non-U.S. transactions

The Exchange Act is not explicit as to its applicability to transactions having international aspects. In describing the need for regulation, the Act refers to "interstate commerce," defined to include "trade, commerce, transportation, or communication . . . between any foreign country and any State, or between any State and any place . . . outside thereof." The legislative history of the Act offers little guidance on transnational issues.

Consistent with principles of international law, the courts generally utilize two basic tests -- the "conduct" test and the "effects" test -- for determining the application of the U.S. securities laws to transnational dealings. In the case of either test, no single factor is necessarily dispositive on the question of jurisdiction. The courts will consider the facts and circumstances of each particular case to determine whether or not jurisdiction exists.

The conduct test merely recognizes the principle that the U.S., as is true with any other nation, has broad jurisdiction over conduct which occurs within its territory, even when the consequences of that conduct are felt beyond its "water's edge." Domestic conduct which has been held sufficient to meet this jurisdictional standard has been variously categorized by the courts as conduct which is "significant" with respect to violations, an "essential link" in the transaction, "substantial" with respect to facilitating the sale of securities abroad, or "some activity" designed to further a fraudulent scheme which is "not merely preparatory" to fraudulent acts committed outside the U.S. Such conduct has included meetings or the signing of contracts in the U.S.

In fact, the Commission in the past has argued that any use of the mails or an instrumentality of interstate commerce in connection with violative conduct is a sufficient basis for jurisdiction, even if the transaction is primarily foreign. And merely preparatory activities in the U.S. have been thought sufficient where the injury was to Americans residing abroad and the conduct "of material importance."

I cannot say whether the Commission would today bring an action on so slender a jurisdictional hook. On the one hand, the U.S. has a substantial interest in the uses to which its facilities of interstate commerce and securities markets are put. On the other hand, deference to concerns of sovereignty and international comity, as well as adherence to the neutral principles I have mentioned, should foster a careful balancing of interests. We ought not seek to assert jurisdiction under the U.S. securities laws wherever possible.

The effects test contemplates an assertion of jurisdiction with respect to foreign violative conduct which has a substantial, direct and foreseeable domestic effect. The cases have not fully defined these concepts and certainly not every adverse domestic effect will satisfy the test. For instance, the courts have held that it is not sufficient to allege that foreign activities have had "an adverse effect on the American economy or American investors generally." On the other hand, if conduct taking place outside the U.S. constitutes a violation of our securities laws and has a direct impact on the market for a domestically traded security or on U.S. investors, jurisdiction probably will exist. A foreign-based manipulation of a security listed on a U.S. stock exchange illustrates this type of conduct.

How, if at all, do these conclusions square with our neutral principles? I suggest that the conduct and effects tests find support in at least four of the principles. Justification for applying national laws to transnational dealings

under these tests derives from the notion that (a) public confidence is essential to healthy capital markets, (b) fairness and honesty in capital market transactions are essential to public confidence, (c) material information should be made publicly available on a timely basis and (d) there should be free and equal competition among suppliers and users of capital. If foreigners can access our markets, deal dishonestly with other participants and escape sanction by dint of their location, these principles are violated. If markets are to be open to all, then all must play by the same rules and be subject to sanctions for failing to do so.

3. Application of U.S. securities laws to internal affairs of non-U.S. issuers (e.g., proxy and short-swing profit rules)

As earlier noted, in 1935 the Commission exempted most foreign issuers from the proxy rules and from the short-swing profit recovery provisions of the 1934 Act.

The release accompanying the initial adoption of the rule stated that ". . . a realistic approach has led to the conclusion that the interest of American investors will best be served by the continuance of these exemptions." Several factors contributed to this approach. First, the release expressly mentioned that the proxy rules and the short-swing profit recovery provisions would have little application because there were relatively few foreign equity issues listed on U.S. exchanges. Second, apparently the Commission believed that imposing these requirements on foreign issuers would encourage them to delist their securities in the U.S. and so would not necessarily be in the best interest of U.S. investors. Third, no other nation had laws similar to the short-swing profit recovery provisions and many nations either prohibited proxy solicitations or had regulations that were inconsistent with the Commission's proxy rules. It was felt that the proxy regulations related to concepts of corporate structure and governance and so were the proper subjects of the law of each country. Fourth, it was believed that the Commission would have many practical problems in attempting to enforce these provisions against foreign issuers.

This rule has remained virtually unchanged since its adoption in 1935, although several technical amendments have been made. The most important revision, in 1966, denied the exemption to "essentially United States issuers." A foreign issuer is considered to be an "essentially U.S. issuer" if it meets the following two conditions: (a) more than 50 percent of its outstanding voting securities are held, directly or indirectly, by U.S. residents; and (b) either at least 50

percent of the members of the Board of Directors are U.S. residents or the issuer's business is principally administered in the U.S.

Generalizing from this rule, I should say that we would view all matters of corporate structure and governance as the proper subjects of the law of the country of origin, absent a compelling national interest at odds with the approach taken by the country of origin. This is an application of the internal affairs doctrine I spoke of earlier.

4. Comments on the proposal for an integrated disclosure system for foreign issuers

Earlier I noted the policy question faced by the Commission in its proposal for an integrated disclosure system for foreign issuers. Should we integrate by adopting the more lenient Form 20-F Exchange Act standards for public offerings by foreign issuers under the Securities Act or stick to the more stringent requirements of the Securities Act now applicable to domestic issuers?

My own view is shaped by the review of the Commission's approach over the years, as summarized earlier. Until 1979, when Form 20-F was adopted, the Commission was as relaxed in its approach to foreign issuers under the Exchange Act as it was strict under the Securities Act. I see no reason why the accommodations made in Form 20-F could not be carried over to the Securities Act, at least for what we are calling "world class issuers." The notion of a "world class issuer," incidentally, is that of an issuer which, by means of its size and importance, enjoys a world-wide following among securities analysts, including those in the U.S.

It can not be gainsaid that the Securities Act requirements have stood as a major obstacle to foreign issuers who would otherwise have found it attractive to make public offerings in the U.S. In 1980 only 57 foreign private issuers registered public securities offerings under the Securities Act. Because I view Form 20-F as a reasonable compromise between accommodating foreign accounting and disclosure practices and ensuring investor protection, I could accept its standards for public offerings in the interest of encouraging the use of our markets by foreign issuers. U.S. investors are seeking foreign securities in any event, and it is simply a question of where they will buy. If the securities are offered in the U.S., there will often be better disclosure, and hence better protection, than would otherwise be available to U.S. investors.

It could be argued that by making it easier for foreign issuers to raise capital in the U.S., we are simply increasing the competition for scarce capital among domestic issuers and exporting U.S. capital abroad. One answer to this concern is to point to the neutral principles, which support precisely this kind of competition and comport with our long-standing commitment to promote global comparative advantages, in capital as well as in goods, through an open international economic system. Another answer is the practical one. The U.S. now enjoys a highly favorable balance in net capital flows. No reasonable estimate of the effect on net capital flows of encouraging the use of our capital markets by foreign issuers in this way points to a reversal in this balance.

Where the use of Form 20-F would involve the compromise of a standard we hold important to investors, such as disclosure of both revenue and income by industry and geographic segments, we could indicate our intention eventually to move to the more revealing standard now applicable to domestic corporations. This kind of evolutionary approach is entirely consistent with the Commission's actions with regard to foreign issuers over the past four decades. It would also be consistent with, and supported by, the neutral principles earlier suggested.

While I would lean toward flexibility in integrating the Securities Act and the Exchange Act for foreign issuers, it may well be desirable to ask those issuers who make public offerings in the U.S., and at least their principal officers, to appoint an agent for service of process and subpoenas in actions in the U.S. courts, and for service of Commission process, where the application of our securities laws to those offerings is involved.

This form of consent would simply help to assure that the laws to which a foreign issuer and its principal officers voluntarily submit can, in fact, be made applicable to them. It does not offend foreign laws. It does, however, serve the principle of equal treatment.

Responsible issuers would no doubt respond to the legitimate claims of investors under the U.S. securities laws, with or without the consent, as a matter of corporate responsibility and enlightened self-interest. Lack of consent protects chiefly the corporate renegade.

The adoption of Form 20-F has raised another issue worth mentioning here. For foreign issuers with securities trading in the U.S., there has always been a gap between the reporting requirements of those who, by reason of having made a public offering in the U.S. or listed on a U.S. exchange, were required to register and file periodic reports under the Exchange Act,

and the others, who were exempt, subject only to filing materials made public in the country of domicile or incorporation.

As we have seen, until the advent of Form 20-F, the disclosure requirements under the Exchange Act were very modest indeed. Thus, the gap in disclosure between those subject to registration and filing under the Exchange Act and those exempt was not a major one. Now, however, the disclosure gap between these two classes of foreign issuers has become enormous.

At the same time, the size and complexion of the over-the-counter market for foreign securities has changed dramatically. The dissemination of real-time quotation information for over-the-counter securities through NASDAQ has created extremely active and liquid markets for many over-the-counter securities with substantial public investor participation. As a result, many foreign issuers are actively sponsoring the trading through NASDAQ of their securities or American Depository Receipts (ADRs).

Given the statutory mandate of providing adequate information to U.S. investors trading in the secondary markets for these securities -- a mandate equally applicable regardless of which class of issuer is involved -- this disclosure gap has become unacceptable, at least in the case of those foreign issuers choosing to have their securities, or ADRs evidencing their securities, listed on NASDAQ.

Conclusion

At the outset of these remarks, I cited evidence of the growing internationalization of the world's securities markets. This trend demonstrates the need to accommodate the legitimate interests of many nations in insuring the integrity of their securities markets without unduly impairing the conduct of transnational dealings in securities.

To meet this need, cooperation among the affected nations is absolutely essential. The fruits of cooperation can be bountiful, as the important accomplishments of the recent negotiations on problems of insider trading between Switzerland and the United States so dramatically illustrate. This splendid example of bilateral cooperation and agreement should serve well as a beacon to assist efforts to achieve multilateral agreements on common problems of international securities regulation.

Cooperation will come most readily, I submit, when regulators have first agreed on an appropriate set of principles applicable to all. When this agreement is reached, the self-

interest of all nations becomes aligned. After all, what's sauce for the goose is sauce for the gander. I have suggested a number of principles that already appear to have wide currency among nations. Others can no doubt be developed.

What we now need is a forum of regulators for the organized, systematic and continuous search for reason and fairness in dealing with transnational issues of securities regulation. I don't mean to suggest that such a forum, and the development of neutral principles, will easily solve all problems of competing national interests. Different nations will value such matters as business secrecy differently, and how such matters will be weighed in the development and application of neutral principles can not be measured in advance. But the key, in today's world of growing national interdependence, is to identify the areas of common self-interest and then follow the implications of that self-interest to their logical conclusions.