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EXCHANGE COMMISSION**

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KEYNOTE ADDRESS

**61st Annual Convention of the North American
Securities Administrators Association**

**An Address by Harold M. Williams, Chairman
Securities and Exchange Commission**

**Tarpon Springs, Florida
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I am very pleased to be here today. This Conference provides an invaluable opportunity to renew professional acquaintances and friendships, and to reflect on new ideas and trends in the securities industry. The dialogue between state and federal securities law administrators should materially contribute to the effective implementation of the securities laws and the integrity of the securities markets in this country, and it is my hope that we can, by working together, improve our already substantial record of cooperation and accomplishment.

I want to talk about three subjects today. First, and perhaps most topical, is the subject of tender offer regulation. Second, I would like to give you a brief review of some of the areas in which the Commission has spent and will be spending a considerable portion of its limited resources in the coming years. Finally, I would like to encourage concentration on a joint approach to enforcement matters which I believe will allow us all to be more effective in enforcing securities laws and in providing investor protection.

A. Tender Offers

We have many areas of mutual interest. One which has recently been much in the news, particularly due

to the Fifth Circuit's decision in Great Western United v. Kidwell, is the regulation of tender offers.

Tender offers present challenging issues to both State and Federal regulators. Over the past decade, a two-tiered approach to tender offer regulation has emerged. At the federal tier is the Williams Act. At the state tier are some 36-takeover statutes, 25 of which became effective after January 1976.

I would like to share my personal views with you about these statutes and to propose a framework of cooperation and consultation between state and federal administrators in this area of mutual concern. I do not wish to discuss the validity of these statutes under the supremacy and commerce clauses of the U.S. Constitution and the Williams Act, however, because these are questions which are being considered in Great Western United, and that case is not as yet final. Thus, I will confine my remarks to the aspects of these statutes which I personally find troublesome. My essential concern is that such statutes tend to be overly protective of existing management.

1. The Protectionist Tilt

Among the typical provisions which protect incumbent management are the following:

- (i) The jurisdiction of such statutes commonly turns upon the relationship between the target company and the state, rather than on the presence of shareholders in the state;
- (ii) Pre-commencement filing of tender offers with the state and contemporaneous transmittal to the target company is required by over 30 states. Some require such filings to be made as long as 60 days before the anticipated commencement of the tender offer;
- (iii) Pre-commencement nearing procedures are mandatory in 15 states if requested by the target company;
- (iv) Pre-commencement publication of the material items of the tender offer is often required; and
- (v) Over 25 statutes provide for exclusion of "friendly" tender offers from their restrictions.

These restrictions on contested tender offers focus on the tenderor, and the efforts by target company management to defend against contested tender offers are not generally subject to similar regulation. Under many statutes, for example, communications to shareholders by the target company are largely unregulated. Thus, while the bidder must provide

extensive disclosure to the state and to shareholders pursuant to explicit requirements in every state statute, only a few states have any specific disclosure requirements regarding communications to shareholders by the target company.

The effect of these statutes is uncertainty and delay, which favor incumbent management to the detriment of a potential bidder. In my view, this protectionist-tilt represents a departure from the neutral system of tender offer regulation envisioned by Congress when it passed the Williams Act.

On the basis of the legislative history and the language of the Act, I think it reasonable to conclude that the primary objective of the Williams Act was to provide investor protection in tender offer situations, rather than to regulate tender offers as an economic phenomenon. Moreover, the Act was intended to be administered in an even-handed way which would neither obstruct nor facilitate tender offers except to the extent necessary to accomplish the purpose of investor protection.

In my view, state statutes which facilitate the defeat of hostile tender offers are inconsistent with this philosophy, and are inherently unfair to the

shareholders of target companies, who are entitled to full disclosure and a fair chance to decide for themselves how best to respond to a bid for their shares.

Moreover, while the Williams Act is neutral on the economic consequences of tender offers, I personally believe the state takeover statutes, in some cases, tend to insulate entrenched but inefficient management in ways which are unjustified by notions of good corporate governance or by economic realities. Especially when combined with defensive charter amendments - such as super-majority voting requirements and staggered election of directors - at some point this insulation impairs the value of a shareholder's investment in his company, both in terms of liquidity and investment merit.

I wish to stress that I am not encouraging hostile tender offers at the expense of incumbent management. I firmly believe that a target company should have a fair and equal opportunity to defend itself and its record when challenged. I believe that incumbent management should have enough sense of security in its job to be able to concentrate on doing it and doing it well. Management should not need to spend its time looking over its shoulder and dreaming up schemes to insulate itself from

attack. At the same time, management is not entitled to build barriers that are so great as to make it immune to the marketplace and to the interests of shareholders.

Finally, I have a great concern that such restrictions, which tilt the nature and process of corporate structure so severely, provide those who advocate basic change another strong argument that all management is interested in is using the system to perpetuate itself.

For similar reasons, I am concerned about the far-reaching impact of state takeover statutes. They allow local concerns which may conflict from state to state to have a significant effect on national investment decisions. They limit a non-resident shareholder's ability to participate in tender offers, and make it difficult for tenderors to comply with diverse and inconsistent local procedural and substantive requirements.

In my opinion, the pro-management tilt and wide-ranging effect of these statutes are undesirable, particularly in view of Congress' purposes and objectives in passing the Williams Act.

2. State Tender Offer Regulation in the Future

While I believe that state takeover statutes, in their present form, are thus undesirable on a number of grounds, I also believe that there may be a meaningful role that states can play in tender offer regulation. I recognize that local concerns have played a significant part in the adoption of takeover statutes. Thus, while the state's role should complement the federal scheme, and not hinder it, a dialogue between the states and the Commission regarding these local concerns may allow the development of a system of tender offer regulation which, to the greatest extent possible, satisfies the legitimate goals of both federal and state regulation.

For example, an analysis of state concerns may be of great assistance to the Commission in its efforts to protect investors under the Williams Act. In the past, contacts between the Commission and state administrators regarding tender offers have been infrequent. In order to promote a greater understanding of mutual problems, the dialogue on this subject should be enhanced, and I welcome your thoughts on how best to do this.

To get the dialogue started, I suggest that we might fruitfully have meetings, to discuss our respective

roles in tender offer regulation, and to see what progress we can make on a complementary approach to the problem. For example, one item on the agenda of such a meeting might be Section 1904(c) of the ALI's proposed Federal Securities Code. I realize that NASAA has declined to express any views on this subsection, and I am here expressing no view of my own on its merit. However, I think that the concept embodied by this provision - that a state may have an interest in regulating tender offers for a target company which has its principal place of business, a majority of its equity shareholders and a majority of its equity shares in the state - is certainly worth discussing. If you have other agenda items to suggest, or any suggestions as to how to make a meeting between us more productive, please let me know.

There are ongoing efforts by the Commission which may also help to resolve some of the concerns that caused states to adopt takeover statutes in the first instance. Some time ago, the Commission published for comment certain rules and schedules related to tender offers. Among these proposals was a provision which would require any tender offer to remain open at least 15 business days from the date the tender offer is first published, sent or given to security holders. If the bidder increases

the consideration offered or the dealer's soliciting fee, the tender offer would be required to remain open for at least ten business days after the date of such increase.

Another proposal would extend the initial withdrawal right of depositing shareholders in certain tender offers from 7 calendar days to 10 business days and would establish a right of withdrawal for any shares which have not been accepted for payment by the bidder during the seven business days following the date of a filing of a competing tender offer.

It would appear that the adoption of these proposals would provide investors increased protection without sacrificing the neutral approach to tender offers envisioned by the Williams Act.

I anticipate that the Commission will be acting on the tender offer proposals in the near future. On behalf of the Commission and its staff, I urge your participation in our continuing efforts in this area. We would be especially interested in the problems which you have seen in tender offer regulation which may lend themselves to, or which may require a national solution. Let us know what the problems are, and which ones will remain after our proposals are adopted, and we may be able

to help.

I am optimistic that we can work together to develop an integrated system of tender offer regulation with which we can all feel comfortable. I hope you share my feelings.

B. A Progress Report on the Commission's Work

Tender offer regulation, of course, is only a part of the Commission's work, albeit an important one. I would like to describe briefly some of the other projects on which the Commission is concentrating its resources, so that you will have a sense of what we are going to be doing over the next few years.

1. The National Market System

In the securities acts amendments of 1975, Congress mandated the Commission to facilitate the establishment of a national market system. Among the objectives of that system are the linking of all markets for so-called "qualified securities" so as to promote the most economical and efficient execution of securities transactions, improve the availability of information, and enhance fair competition among markets and market participants. Last January, the Commission issued a release (No. 34-14416) outlining its current thinking on the components of a national market system. Briefly,

it is our view that six distinct elements are necessary to implement such a system:

(1) a composite quotation system; (2) a comprehensive market linkage system which is itself composed of two elements - an intermarket order routing system and a universally available message switch linking orders to all markets; (3) the creation of a central file for public agency limit orders; (4) refinement of the consolidated transaction reporting system; (5) designation of the types of securities which will be "qualified" for trading in a national market system; and (6) disposition of the remaining off-board trading restrictions.

A great deal of progress has already been achieved, particularly in the area of dissemination of market information. The consolidated transaction reporting system is now fully operational, providing last sale information for listed securities of national investor interest on a current basis from all markets in which the securities are traded, and, on August 1, 1978, the Commission's quotation rule went into effect, calling for the dissemination of firm quotations, including size, from the various market centers.

There has also been progress in market linkage

systems. An intermarket trading system ("ITS") is now operational, linking six of the nation's securities exchanges -- New York, American, Boston, Midwest, Pacific and Philadelphia -- in approximately 160 issues, with another 50 issues scheduled to be added this month. In addition, a pilot project is operating under the sponsorship of the Cincinnati Stock Exchange testing the feasibility and desirability of an electronic, multiple-dealer trading system.

Still more work remains to be done to make a national market system a functioning reality. In responding to our requests, many valuable comments have been received from the self-regulatory organizations and the industry regarding the important issues which remain to be resolved -- such as the need for and the means of achieving order routing systems which link brokers to all market centers, the need for nationwide limit order protection, the role of time and price priority in the execution of orders, and the question of remaining exchange restrictions on off-board trading. These are very complex issues, but they are issues which must be resolved as part of the evolutionary process which will eventually lead to the establishment of a true national market system.

2. Corporate Accountability

Perhaps the most widely discussed area under review by the Commission is corporate governance, which I prefer to characterize more realistically as "corporate accountability." The Commission is engaged in a broad re-examination of shareholder participation in the corporate electoral process and corporate accountability generally, and has held public hearings on the issue. As a first stage in its review, the Commission has proposed rule, form, and schedule amendments designed to increase the information available to investors regarding (1) the structure, composition, and functioning of boards of directors, (2) resignations of directors, (3) attendance at board and committee meetings, (4) voting policies and procedures of so-called institutional investors regarding proxies, and (5) the terms of settlement of proxy contests. The Commission also has requested comments on a rule proposal that would enable shareholder-proponents to review management statements opposing shareholder proposals prior to the mailing of issuers' proxy materials.

The staff is also engaged in the preparation of a comprehensive report addressing some of the more complex questions raised in the public hearings. The report will cover such issues as existing checks on corporate conduct; available shareholder remedies; the role of the board of directors and the need for structural reforms; clarification of director's responsibilities; and the respective roles of the private sector, shareholders, the Commission, the self-regulatory organizations, and Congress in corporate accountability. After publication of the staff report, the Commission will consider what further action, if any, is appropriate and will determine whether to publish additional rulemaking proposals or to recommend or support new legislation affecting corporate accountability. Your participation in this process would be greatly appreciated.

As you all know, corporate accountability is an area which has historically been left largely to state law. However, there is a growing federal presence in this field. Federal minimum standards, that state laws must meet, is a potential development. Senator Metzenbaum's subcommittee on shareholder rights is exploring the need for such legislation. A contributing factor to this trend may be a perception, at the federal level

and elsewhere, that many states are unduly protective or permissive of corporate management. To the extent that state actions and statutory interpretations in the area of corporate accountability provide encouragement for federal initiatives, I would suggest that the implications of such actions and interpretations be given serious consideration. Your input may be highly significant to the future course of substantive corporate law in this country.

3. Disclosure Policy

Recently, the Commission has taken various steps relating to disclosure policy. For example, we have published proposed amendments to various forms, reports, and schedules intended to standardize and improve disclosure requirements relating to management remuneration. The amendments are designed to provide clearer and more concise reporting of all types and formats of remuneration, including securities-based and other non-cash arrangements. In addition, in response to the considerable concern engendered in the corporate and legal communities by the Commission's interpretive releases regarding disclosure of personal benefits or "perquisites" provided to management, these proposed amendments are intended to provide a clearer method for the reporting of such

benefits.

During July, the Commission also adopted certain previously proposed amendments to its disclosure requirements regarding the identity and background of corporate officials and events believed material to investors' evaluation of the ability and integrity of management.

Concerning disclosure matters in general, the Commission has adopted and implemented some of the recommendations set forth in the report of the Advisory Committee on Corporate Disclosure published late last year. Last December the Commission adopted the first two items of Regulation S-K, which provide uniform disclosure requirements for registrants, in various reports and forms, of their business and properties. Registrants must now present, for a five year historical period, revenue, profit, and asset information relating to their industry segments and geographic areas.

In April, the Commission adopted amendments to Form S-16, the short registration form, which for the first time made the form available for primary offerings. Since the adoption of these amendments, the short form has been used in primary offerings of debt and equity securities having an aggregate value of over \$1 billion. Further amendments were adopted on September 7 of this

year making the short form available for primary offerings by larger, well-established subsidiary issuers.

The amendments to Form S-16 are a reflection of the Commission's endeavor further to integrate the Securities Act with the Exchange Act in order to reduce registration costs and thus the costs of raising capital, to facilitate timely access to the capital markets, to make more meaningful the periodic reporting requirements of the Exchange Act and to eliminate duplicative disclosure, all in accord with Advisory Committee recommendations.

Additionally, the staff has completed its review of the Advisory Committee's recommendation that the Commission issue a public statement encouraging the disclosure of earnings forecasts and other forward-looking information by registrants. It is anticipated that proposed guidelines for the disclosure of such information will be considered by the Commission in October. In conjunction with these guidelines and in order to encourage the disclosure of forecast information, the Commission also expects to consider, in accord with the Advisory Committee's recommendation, a rule proposal that would provide a "safe-harbor" from the liability provisions of the federal securities laws for reasonably based and adequately presented

projections or forecasts that are made in good faith, but ultimately prove to be erroneous.

4. Small Businesses

The Commission is vitally concerned with the plight of small publicly-held companies. We realize that the states also have a special interest in small business. Thus, the Commission took a "grass roots" approach, holding public hearings in the spring of this year in six major cities concerning the effects of Commission regulations on the ability of such companies to raise capital and concerning the impact of Commission disclosure requirements on these companies. I know that several state administrators testified at these hearings, and we appreciate very much their views on these issues.

This area also provides a good example of the need for complementary regulation. To provide needed relief from capital raising costs, a week ago the Commission lifted the ceiling for regulation A offerings from \$500,000 to \$1.5 million and raised the aggregate offering price of securities which may be sold without the use of an offering circular under Rule 257 of the 1933 Act from \$50,000 to \$100,000. A factor in our decision not to require that Regulation A issuers provide certified

financials was the fact that many small companies who need to raise capital cannot always afford them. However, 30 states now require certified financials, in some form or other, in connection with most Regulation A offerings. Thus, our policy judgment will be at best incompletely implemented. I would hope that the states can in the future work together with us to avoid regulation which works at cross-purposes to the goal of arriving at the difficult balance where small business can survive and flourish, and yet investors can be protected.

5. Accounting Issues

Accounting problems have recently taken much of the Commission's time, and promise to require a significant commitment for the foreseeable future. As I'm sure you are aware, the role and responsibility of the accounting profession has come under careful scrutiny recently, resulting in a broad examination of the nature and structure of that profession. In this regard, on July 1, 1978, the Commission transmitted to Congress a comprehensive report entitled "The Accounting Profession and the Commission's Oversight Role." The report covered various issues relating to the independence of accountants, the

accounting profession's ability to develop and maintain a viable system of self-regulation and self-discipline, and the processes by which accounting and auditing standards are promulgated.

The central issue involved in each of these areas is whether the accounting profession should continue to be primarily self-regulated or whether government should become more directly involved. The July report expresses the view that the best approach is for the profession to remain under private direction, but with active oversight from the Commission.

Approximately one year ago, the American Institute of Certified Public Accountants created a new Division of CPA Firms and within that Division, an SEC Practice Section which includes a Public Oversight Board composed of distinguished individuals from outside the profession. It is hoped this structure will serve as a framework within which the accounting profession can regulate itself. In addition, Congressman John Moss introduced legislation last June which would establish a self-regulatory organization for accountants patterned after the NASD. While the Commission is not wholly satisfied with the Profession's efforts at self-regulation, it believes that the Profession's initiatives

show sufficient promise to be permitted to continue.

I might add that a factor in the Profession's failure to achieve adequate self-regulation to date stems from the existence of inadequate disciplinary programs at the state level. I recognize that the maintenance and improvement of such programs is not the responsibility of state securities regulators, but you can certainly help us get the message across, and you do exert influence. Indeed, there may be a number of areas in which the Commission and the states have common concern where securities administrators do not have direct authority to act, but can nevertheless make an important contribution.

6. Investment Management

The Commission's Division of Investment Management has recently undertaken two comprehensive reviews of the statutes it administers - the Investment Company Act and the Investment Advisers Act. Both reviews have as their general goal creation of clear and comprehensive systems of rules which meet current regulatory needs, and could lead to the recommendation of new legislation.

A special study group established within the Division will review the Investment Company Act and the various rules, regulations and administrative practices thereunder which

have been adopted over the years. One objective of the study will be to replace administrative review of proposed investment company activities with rules codifying circumstances and conditions under which such activities are appropriate. This should eliminate unnecessary administrative burdens on both the regulators and the regulated. The rules I envision would give fund managers and directors wider latitude in making business decisions while at the same time making it clear that they are responsible for ensuring that those business decisions are made in a manner consistent with their fiduciary responsibilities.

The Investment Advisers Act review will concentrate on whether the existing regulatory structure is adequate in light of the dramatic growth of the advisory industry in recent years. Among the many topics to be considered are whether or not there should be professional and financial qualifications for investment advisers; whether there should be specific anti-fraud rules dealing with abuses to which the advisory industry may be particularly vulnerable, such as "scalping;" whether there should be different regulations for different types of advisers; and to what extent the Advisers Act should apply to entities such as banks, insurance companies, mini-accounts, and certain types

of publications.

C. Enforcement

I would like to spend the balance of my time on issues relating to enforcement. The prevention and suppression of securities fraud is clearly a paramount objective of all of us here today, and it is in this enterprise that federal/state cooperation can perhaps pay the highest dividends. But it is necessary to recognize that here, as in other areas, our respective roles are different. The Commission is a small agency with a large mandate, and its enforcement resources are being spread thin. The Commission's focus is necessarily upon nationwide and international schemes and on those where no other agency has the power to act. Indeed, the genesis of the Federal securities laws was the recognition that state Blue Sky laws were not well-suited to grapple with multi-state problems and businesses whose assets in some instances exceeded those of some states. On the other hand, such laws are ideally suited to police the numerous local schemes which defraud investors. Accordingly, a partnership between Federal and State securities law administrators should best effectuate the goal of investor protection.

Practical considerations limit the Commission's

ability to cast an enforcement umbrella over all securities transactions. On the other hand, the public concern with white collar crime is unabated, and the need to protect investors and to preserve the integrity of the securities markets is as great as ever. To meet these concerns and needs, the states and the Commission must cooperate even more than we do now.

We have made significant progress in sharing our resources and expertise. For example, training is an area in which we have in the past pooled our resources to the mutual benefit of our respective staffs. Last Fall, approximately 80 State employees attended the Division of Enforcement's annual enforcement training program given at Georgetown University Law School. This year the program will be held from December 11 through December 15 and we hope that you all will send representatives to attend. Our Division of Market Regulation sponsors an annual broker-dealer examination training program which the States are encouraged to attend. Several States have, together with the Commission, jointly sponsored a number of regional enforcement training conferences. This year conferences were held in Los Angeles, Portland and Juneau, Alaska; and next month the 11th annual Rocky Mountain Securities Cooperative

Enforcement Conference will be held in Denver, Colorado. Visual training aids concerning investigative and trial techniques and broker-dealer examinations have been made available to State administrators. But more can always be done. For example, Stan Sporkin has suggested that the Commission consider the feasibility of exchanging young attorneys and investigators, on a temporary basis, with certain states. I solicit your thoughts on this concept, and on any other way in which our staffs may become better trained.

The States and the Commission have also engaged in joint enforcement projects addressed at specific problem areas. Recent successful efforts at coordinated federal state enforcement actions, such as the Income Equities case, prove that joint enforcement by the states and the Commission is possible. Information provided by your membership enabled us to bring important enforcement actions involving fraudulent coal promotions. The joint enforcement efforts against Fraudulent Schedule D oil and gas offerings has proven to be singularly effective. Indeed, several Blue Sky administrators reported to us that fraudulent promoters were resorting to the private offering exemption under Rule 146 in order to avoid the comprehensive Schedule D enforcement program. The

response to such efforts were the notice filings under Rule 146.

In a regulatory context, the Focus Report and the resultant uniform filing requirements for broker-dealers are further examples of what can be achieved through cooperation. These joint ventures point-up the meaningful working relationship that has been established between our respective organizations. Our job now is to work towards enhancing that relationship.

I learned recently that Arizona instituted an enforcement action in a case involving house plant investment programs. Each year we see new schemes. It seems there will always be those who will invest in dry holes, worm farms, black boxes or the like.

These schemes generally meet the definition of an "investment contract," and are typically touted as guaranteed money makers. Unsophisticated investors are lured by exaggerated claims of quick profits. But this is a story that I suspect is even more familiar to you than it is to me.

I believe that the states can and should take the lead in policing this area. We must concentrate our respective enforcement efforts in those areas where each excels. Thus, the states are better able to police

local promotional schemes. State officials generally learn of these schemes first. Collectively, the resources of the States are greater than those of the Commission, and state information gathering capabilities on a local level are very effective. Moreover, the States can stop these schemes fast through cease and desist orders - a tool which the Commission does not have - and can quickly alert other jurisdictions to their existence.

This call for state enforcement of investment contract and other localized schemes should not be construed as a lessening of the Commission's interest in taking appropriate enforcement action where the facts warrant, but rather as a recognition that, for the most effective enforcement of the securities laws, we each have responsibilities to discharge and we each should do what we do best. Your efforts to date in prosecuting investment contract schemes, for example, deserve applause. Minnesota, New Mexico and California have all brought criminal actions and arrested the defendants in worm farm schemes. With the States and the Commission in partnership, enforcement against these schemes will be enhanced.

As an example of the Commission's continuing commitment to hold up its end of this partnership, we are prepared to offer whatever assistance we can in support of your

efforts to obtain increased enforcement resources from your respective states. We have testified on your behalf on some occasions in the past, and we are ready to testify in the future, at legislative or budget hearings, to aid you in obtaining additional resources. We will share what expertise we have on case management techniques, help you develop and coordinate multi-state enforcement efforts, and provide you with access to our files and information gathering resources. Incidentally, I've been told that getting information from the Commission apparently takes some patience. Accordingly, the staff is now reviewing a proposal calculated to significantly expedite state access to Commission materials.

D. Conclusion

The Commission and state securities law administrators share what I believe to be a uniquely amicable and cooperative relationship. My views here have been expressed in the spirit of that relationship and with the hope of improving it. The time seems ripe to expand our partnership, so that we can each make the best use of our respective resources. The result

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will be enhanced investor protection, greater integrity in the securities markets, and a closer bond than ever between the Commission and the states.

Thank you.