NEWS

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THE ENFORCEMENT ACTIVITIES OF THE SEC: AN INTERIM REPORT

An Address by

William J. Casey, Chairman

Securities and Exchange Commission

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NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION
Chateau Frontenac
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I am extremely pleased to have the opportunity to meet again with you of the North American Securities Administrators Association. I feel that all of us have moved forward in enforcement effectiveness since our spring meeting in Washington. That gathering was most helpful to us at the Commission in assessing our mutual problems. I wish to review with you some of the things we at the SEC are doing and plan to do, and how the Commission and your own state regulatory agencies can strengthen each other in the discharge of our respective responsibilities.

I am firmly committed to the dual system of regulation that has worked so effectively for many years. I am fully aware of the many problems that each of you has, particularly those involving inadequate staffing. I am also aware and appreciate the tremendous work that you accomplish, especially the ability to determine emerging problems quickly, and to deal with them before they become national problems.

As you know, the cooperation that exists between our respective organizations is probably at the highest degree it has ever been. We have developed programs for a complete

exchange of information and intelligence. We should soon reach the point where we have a central pool of information about the chronic violators and a comprehensive exchange of information and evaluation about current developments which may indicate any kind of securities fraud. We have also worked together on training programs so that each of you is invited to, and many of you attend our nationwide enforcement training program in Washington each year. This year's program was held in June and we had 30 persons from various state agencies as well as seven representatives from Canada.

While we have always been sensitive to the problems caused by an ever-growing regulation and enforcement burden, and have fostered and encouraged cooperative efforts in regulation, enforcement and training matters, these efforts should be enlarged. I have instructed Alex Brown, who is the Director of our Broker-Dealer Inspection Program, to include you in our plans for the training of our new broker-dealer examiners. We are now planning two training programs for 1972, one during the week of October 2 through October 6, 1972 in Washington, primarily for SEC examiners and

inspectors in the eastern states and provinces and securities administration officials from those jurisdictions, and another in Los Angeles in late November or early December for the western states and provinces. These courses will be devoted to a review of the latest rules and regulations governing broker-dealers and will provide a solid foundation in broker-dealer fundamentals for inspectors.

Establishing an effective system of coordination among self-regulatory entities and participating state regulators so as to better utilize the total resources available and to avoid unnecessary and burdensome duplicate examinations will be a prime concern of Alex's office. We hope he can perfect a system whereby a state agency which participates in the coordination program will be notified of the examinations conducted by all other regulators in its territory, and Alex's office will act as a clearing house for such information and will coordinate the program.

I am also firmly committed to the expansion of our cooperative enforcement program which is now entering its fifth year. As you know that program was conceived by your former colleague, Commissioner Hugh Owens, who remains its guiding spirit; Hugh has been tremendously successful with the program, which has received the enthusiastic support of all participants. I am particularly pleased with the support we have gotten from the states and certain of the provinces. I think the new format which has been developed in certain of the regional conferences involving an open session with local practioners and industry representatives is a substantial step forward. I urge those of you which have not yet adopted this idea to consider it and determine whether it would be feasible to include it in your own programs.

It would be impossible for me to relate every area where we have developed successful working relationships. While I am pleased with the progress we have made, I believe

that more can be done, and that we should strive to attain the optimum. I have requested each of our Regional Administrators to be mindful of his relationships with the states in his region, to develop day-to-day fully cooperative working programs, and to include you in his local training efforts and joint inspections of broker-dealers.

I am also asking the Regional Administrators to attempt to develop with the state regulatory authorities programs which will provide for a better sharing of the regulatory responsibilities. We know that in the state of California there is a readiness on the part of local officials of Los Angeles to participate in our enforcement program. We have already taken steps to assist the local police officials in training their employees with respect to the detection of securities violators and analysis of complex financial information. That program was so successful that we have now been requested to participate in a similar program being conducted by the San Francisco authorities. I think this is only a beginning for what ultimately can be accomplished in this area. I see no reason why, after there has been adequate

training of local officials, they cannot do the job equally as well if not better than the SEC where there are local violators.

I don't believe that we should make a "federal case" every time there is a violation of the Federal securities laws. After all, we have a manpower problem too, in spite of our personnel increase over the last two fiscal years. Certain cases are more properly enforced at the local rather than the federal level. In each instance where local authorities are equipped, able and willing to handle the matter, they should and will be given the opportunity to do so.

Now I want to particularly comment on our cooperative programs with our hosts. I am especially happy about our excellent relationships with Canadian Securities Administrators and the Canadian National Government staff. Our relationships are so good and have been so successfully carried out that we can truly state that there has been established a two-way street on the exchange of information and joint enforcement of our respective securities laws. This is the way it must be if we are to meet the ever increasing multi-national and

international developments reflected in the growth of the securities markets. Indeed, the working liason that has been effected between us is an extraordinary example of what can be accomplished when both parties are willing participants despite the existence of any national differences--either legal, technical or otherwise.

I am hopeful that similar cooperative programs will be possible, when other jurisdictions recognize that in this new world wide securities market that is rapidly evolving each of us is dependent upon the other, if we are to maintain adequate protective standards and the confidence of investors regardless of their location or nationality. The progress and accomplishments that we have achieved between our two countries is a dramatic demonstration of what can be done and what must be done if we are to assure the integrity of our securities markets.

We are currently finding an increasing number of instances where securities offerings and promotions are being carried out in violation of the laws of both of our countries. Our lengthy unmanned border, which provides such easy access

between our two countries for both legitimate and illegitimate entrepreneurial activities, cannot be permitted to be used as a barricade to frustrate the regulatory and enforcement responsibilities or our two countries.

I normally save crowing about our enforcement successes for use before Congressional appropriation committees, but since we are all in the enforcement business, I thought it might be particularly appropriate to mention a few of them here. Among our more recent cases we have spelled out as securities violations the improper use by financial columnists of market information and newspaper space, the use of boiler plate disclosure to conceal new developments such as a change in litigation posture, "earnings management" by companies attempting to use the accounting rules to present a false picture of their corporations, brokers selectively notifying big clients of the changes in their research recommendations, and other new problem areas in the securities laws. I'll leave the full list to Stan Sporkin, who will regale you tomorrow while I must unfortunately keep a prior appointment in Washington. I would, however, like to touch briefly on the recent District Court injunction obtained by the

Commission against Dare To Be Great, Inc., and what this particular litigation means to all of us.

For some time the Commission has been concerned with the spread of the pyramid sales scheme in the United States. Hundreds of millions of dollars of public savings are going into these schemes, mostly from unsophisticated people who can least afford it, and the general result will be a cruel disappointment when the "chain letter" effect comes home to roost. We believe that these schemes generally involve the sale of an investment contract -- that is, a "security" -- over which we have regulatory authority. Many of the schemes, however, are structured in such a way as to raise a doubt as to whether a security is involved, and we are beginning to expend substantial investigatory efforts to determine whether federal securities laws have been violated by promoters of these schemes. Local authorities have attempted to deal with these plans in varying ways, but even though many injunctions and other remedies have been granted against them, they continue to operate. I understand that there have been actions against Glenn W. Turner

Enterprises, Inc. -- the largest and most flamboyant of the plan sponsors -- or its subsidiaries in at least 37 states and the District of Columbia, yet Mr. Turner continues to promote his pyramid plans without registration and possibly by use of fraudulent sales techniques. Under pressure from local authorities and other federal agencies, we brought an action in the federal court for Oregon to enjoin Dare To Be Great, Inc., one of the Turner enterprises, and two weeks ago received an injunction based on a ruling that the Dare To Be Great plan involves the sale of an unregistered security.

This preliminary victory cannot be relied on for ultimate success. For one thing, the decision is on appeal. For another, the District Judge denied our request for a receiver and repayment of monies to the Dare To Be Great participants. Moreover, Mr. Turner himself announced on August 31 that if necessary he would split up his pyramid empire into 500 or more companies to make it impossible for state or federal authorities to regulate or retrieve funds committed to these companies.

Because of the doubts raised on these plans I feel that possible clarifying legislation can go a long way towards

simplifying enforcement activities in the multi-level area. On behalf of the Commission I am sending today a letter to our Congressional oversight committees asking for their assistance in obtaining such national legislation to protect the victims of many of these schemes and to restore investor confidence throughout the country.

Frankly, our concern in this matter has increased greatly because until recently we did not appreciate the true scope of the problem. It is now estimated that there are over 150 pyramid promotion schemes being operated in the various states and that the public has invested more than $300 million in them.

I have urged at a minimum that the federal securities laws be amended to make clear that an investment in a pyramid promotion is a security. This would ease considerably the enforcement burden and make it far more difficult for the promoters to separate thousands of individuals from their savings while the outcome of test court cases is awaited.

It is my belief that the basic pattern of existing securities laws could be adapted to the task of dealing with pyramid promotions. Thus a system requiring registration of these interests and their promoters in advance of sale is appropriate. What appears to be needed, however, is a blend of disclosure and regulation, since disclosure alone may not be enough. The SEC, when given broad rule-making powers, can differentiate between lawful and illicit activities as substantive distinctions become clear.

I wish to close with a few comments about our new Enforcement Division and our plans for its future. As you are all aware, on August 5 in a reorganization of the SEC, we created a new Division of Enforcement headed up by Irv Pollack and Stan Sporkin. It is hoped that concentrating our activities under these two loyal and experienced public servants will make us more efficient and consistent in the future. Already we are beginning to see the fruits of the decision in an increased volume of meaningful cases being suggested to the full Commission. These we will naturally announce in due course. We are also attempting at this time to implement certain suggestions made by the Enforcement Policy

Advisory Committee -- known as the Wells Committee -- to make our procedures more understandable to practioners. We are striving to strike a balance between keeping our enforcement activities effective by not encumbering them with so many procedural requirements that cases take an unconscionably amount of time before they can be brought and the serious sanction suffered by defendants who are merely named publicly in our cases before proof is established. We plan to clarify our informal procedures of allowing possible defendants to submit a memo in advance of the institution of actions against them, but we don't intend to pre-litigate all our enforcement cases. We are stepping up the powers of our hearing examiners -- which are now called Administrative Law Judges under a new federal ruling -- to take some of the burden off the Commission. We are also considering a practice of making possibly significant regulatory positions -- which do not have the force of Commission rules but still are generally known to people who practice regularly before us -- public to all practitioners.

With our new reorganization and what I hope will be increased staffing, I hope we will be in a position to more completely yet more fairly enforce our statutory mandates. We will, however, continue to rely upon all of you, as we have in the past, and we hope you will continue to rely upon us for assistance in achieving our common goals