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BY

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After three false starts, I can tell you with some assurance, and with apologies to bird lovers, that this will indeed be the swan song that the press said I gave last December.

With some hindsight and perhaps a little rationalization, I would like during the next 20 minutes or so to give you my views of what we have been about during these past 16 months and what I hope the Commission will be doing in the years just ahead.

I will also make some effort to deal with the remarks made about the SEC yesterday by Secretary Blumenthal in New York and with remarks recently made by one of the more uninformed critics of the SEC.

To that limited extent, my remarks should perhaps be labeled "The SEC Talks Back." But my real purpose tonight is to return to a theme of 1975, of the 1976 election, and of President Carter's Administration.

Whether we call it deregulation, regulatory reform, or reregulation, we in government are facing a continued and growing public and political demand that we do a better job in rationalizing the regulatory process to the American public, as well as to ourselves. Secretary Blumenthal said

that "the Administration will be re-examining the impact of tax and regulatory structures on investment and on the financial system to remove all inhibitions to the investment we want to see."

I have been trying to say something like that this past 16 months. Whatever we may perceive of the job we are doing, the job must be done better and it must be better understood by those who are affected by our actions -- by those in the government and the public who judge us.

We can take some pride but very little comfort from the fact that observers consistently rate us first among the regulatory agencies. There are too many others, and here I speak of respected and thoughtful commentators, who find us short of the mark.

When I told one old friend of our latest high rating in the Senate Study of Regulatory Agencies, he threw back at me one of my favorite phrases:

> "The SEC," he said, "is like the one-eyed man who is necessarily the king in the world of the blind."

The SEC, in my judgment, is a fine agency by absolute standards as well as comparative ones, but the simple facts are that there is a determination afoot to reform all agencies whether we like it or not and whether we need it or not - and even our best friends see some need for us to do a better job.

We can either lead the parade of reform in a direction that is consistent with our notions of reform or we will be led with the other agencies into a remodeling that may not necessarily make us either bigger or better for the objectives we seek.

Secretary Blumenthal's speech yesterday -- which I welcome on behalf of the agency -- was a well-intended challenge, but it could contribute to a considerable intrusion on our independence by any of the three branches of government if we do not recognize the underlying realities that his words articulate.

Remember that the Sunshine Act and the Freedom of Information Act gave scant recognition to our excellence when their terms were applied to all agencies. Similarly, a Consumer Agency, One House Congressional Vetoes of new Regulations, Sunset Laws and conduct rules, if promulgated, are unlikely to make exceptions for the SEC.

In a sense, we are all in it together. We all deal with the business community, we all affect the same economy, and we are all probably perceived as part of the same imprecise blur by the same public.

Some may hear my remarks tonight as overemphasizing our shortcomings just as others have reacted to my term of office as having been overly critical of what we do. To them I can only repeat the comments I made to President Carter in my letter of resignation:

> That the Commission has an unusually high caliber staff that is well motiviated has been certified to by several Congressional and other reports. I believe the good reputation is well deserved. More important I believe the Commission will continue to lead the way in regulatory reform matters and can be of great help to you in your own efforts to make such improvements throughout the government.

No one has greater respect for the agency than I do, but my view of the job of any chairman of any governmental agency today is to challenge previously-held notions and to call for a dedicated new look at the purposes for which the agency exists.

In that spirit, let me begin my discussion by talking about the overall effort we have made to cause the Commission to function more effectively, an effort that was ably directed by the Executive Director and by the Executive Assistant to the Chairman.

Each Division Director and each Regional Administrator now has close to total responsibility for his budget. He or she is now a manager in every sense of the word. It places more responsibility and it makes it easier to judge management competence.

A comprehensive personnel/management study of all Divisions and Offices is almost completed. Significant changes are occurring as each part is finished.

Paper overload is being dramatically reduced. First, a simple weeding-out of old files will move about 350 file drawers out of the Commission. More important, we have contracted for a comprehensive micro-imagery program that will put all filings on a microfiche and will create an indexing, tracking and retrieval system that will both save substantial money and also make the files more useful to staff and the public. My belief is that this seemingly mundane effort will have a profound long-range impact on how the Commission functions and how it will set its priorities.

By the end of 1978, the computer age will be at the Commission. Properly utilized, such a system will permit all of our files to be available to all of our Regional

and Branch offices on remote terminals (and, of course, make such files also available to the public in all those locations). It will permit the Commission to develop various kinds of random access to the files, to design various types of early warning systems, to better direct our enforcment activities and perhaps, most of all, to use the unique information that we have to better advise government with respect to capital formation.

In the meantime, we have created some major new computer applications. All documents filed in Corporation Finance and Investment Management are now tracked - roughly 150,000 filings each year. And we have reduced the time taken for initial response to almost all of these filings by about 25 percent.

We are tracking Administrative Proceedings in an even more comprehensive fashion. As a result, we have substantially reduced the length of the typical proceeding. Already we have shortened the period from institution of a proceeding to final disposition by over a year. Also, our backlog is down from over 150 as of December 31, 1975 to under 50 as of last week.

The Enforcement Division is making a similar effort. It has just equipped our Seattle and Washington Regional Offices with a computer tracking system of each enforcement action. Eventually this system will equip the Division to equalize workloads better, to eliminate duplicative investigations, to abort investigations that are going nowhere at an earlier stage, and to keep the Commission better informed about investigations that raise substantial policy matters.

Already, the Division management receives each Friday a computer listing of all inquiries made in the prior week.

As an agency dedicated to consumer protection, the notion that a "consumer agency" is needed to make us do our job better comes as a bit of a cultural shock, but there is such a bill now in process.

In anticipation of such legislation we began a major new consumer-type initiative ten months ago. Our efforts are about to produce a nationwide uniform grievance and arbitration system developed by and run by existing self-regulatory organizations under our overall supervision. We are also greatly improving the workings of our complaint processing operation under the direction of our Director of Consumer Affairs.

Last week we told the Office of Management and Budget that if there is to be a new Consumer Agency, such agency should not be permitted to intervene in SEC proceedings. My hope is that we can convince both the Administration and the Congress that we do, in fact, recognize the need to provide an even better protection for consumers, and that we are better equipped than some new agency to take such steps.

We have made a similar effort in the field of Equal Employment Opportunity. We now have, for the first time, a full-time Director of our Programs. We have conducted intensive training sessions for our supervisory personnel and we have asked for the cooperation of industry in providing meaningful job opportunities for minorities and women in the securities industry. Perhaps our agency, more than any other branch of government, can demonstrate that the free enterprise system is open to everyone.

We also have reorganized and enlarged our Office of Public Affairs so that it now encompasses press relations, Congressional relations and public communications.

Perhaps the single greatest change in the Commission has occurred in the Office of Economic and Policy Research.

My comments about this Office will largely be contained in my remarks about Secretary Blumenthal's speech, but let me repeat "once more with feeling" -- as they say on the stage -- my own deeply-held views of the role of economic research in the regulatory reform process.

In my two years in government, in trying to deal with regulatory reform first as a critic from the White House and now as an object of that criticism, one observation has become increasingly clear: government agencies simply do not spend any significant part of their resources in attempting to find out what the impact of their policies has been.

A subnote to the point is that we do not try hard enough to articulate in passing regulations what we think the result of them will be. Making each agency head read each regulation (and I hope from the standpoint of equal protection of the law, that means all members of the Commission and not just the Chairman) may have some beneficial impact but a more immediate result would be achieved with a discipline that would cause each regulation to be accompanied both by a careful description of what is expected to be accomplished and a monitoring system that can determine whether such prediction is correct.

The agency should publicly declare that at a designated future time the rule must be justified again by the data to be produced by such monitoring.

Until we reach a stage where revisiting of old rules and procedures is automatic, and where the lawyer's logic that created the rule is subjected to competent economic analysis, we will not have regulatory reform no matter how much cost/benefit analysis and no matter how often zero-based budgeting and regulation reading is required.

We have made only modest progress in establishing such monitoring at the Commission. But we have begun the process. The most significant of our undertakings is a project we have begun with Experimental Technological Incentives Program, a subunit of the Department of Commerce. This is a cooperative effort between two governmental agencies to detect, measure and monitor the economic impact of those SEC regulations which may impair the efficiency and development of our venture capital markets. If successful, the monitoring techniques which arise from this project will be broadened to apply to all major SEC rules and regulations.

In short, our Office of Economic and Policy Research, newly-formed and augmented with a Director and Deputy

Director and economic fellows, is now, or will soon be monitoring a wide range of matters. Such monitoring will be made public and will hopefully force regular rethinking of existing regulatory policies.

Secretary Blumenthal is correct in asking for such revaluation. Either we will do it for ourselves or it will be done to us. If we wish to avoid one house vetoes and sunset laws we must build this kind of sunset or self-destruct procedure into all regulations.

The most publicized of our recent efforts at reform has been conducted by our Director of Corporation Finance and by our Advisory Committee on Corporate Disclosure under the leadership of former Commissioner Sommer.

We have been proposing, almost monthly, revisions in our standard "S" and "K" forms, not because we believe we now know what they should contain or whether they should be continued, but rather to better assess their impact upon capital formation.

Fundamental restructuring will have to await the report of the Advisory Committee, the completion of some of the monitoring work now underway in the Office of Economic and Policy Research and perhaps legislation.

Let me venture, nonetheless, some embryonic notions of the considerations that should govern the restructuring:

-- Corporations should be encouraged to innovate in how they describe their business and their prospects to stockholders. Well-intended and reasonably-based conjecture proved invalid by later events should not be the basis for legal action.

-- That we have in fact a two-tiered information system, one relied upon by financial analysts and the other by most individual stockholders should also be recognized in law. Corporations should not be compelled to give page upon page of figures to stockholders who rarely use them for their important decisions.

-- In sum, we at least have to try to open avenues for corporations to give so-called soft information to existing and potential stockholders without increasing their vulnerability to litigation.

-- Where new and legitimate forms of investment instruments are proposed, particularly in the area of pooled capital, it is not enough to rely on the precedent of existing law or regulation. We must rethink their validity and balance their continued validity against all interests of the investor.

-- If we satisfy ourselves that the new instrument does not raise undue risk of public harm, then we should suspend our rules to permit its use. If laws block it, we should tell Congress and the Executive Branch of the problem.

That brings me to the field of accounting. Some say we are over regulating, some say we are under regulating. Almost everyone thinks we are doing something wrong.

My view is that we have gone through a period of considerable change with reasonable skill and that it is appropriate that we take stock of where we are. Again, the monitoring work underway at the Commission will be instructive and the report of the Advisory Committee on Corporate Disclosure will be relevant. Here too there are some observations that seem important to me.

-- First, we lack a conceptual structure for what we expect from accounting and we have all been too slow in securing such a structure.

-- Second, we have permitted the public and the government to rely too much on the figures produced by accountants. We have come to expect more than can be delivered and when the accountants fall short, as we should have known they would, we ask for more of the same.

The result is <u>that business</u> is paying too much for what <u>the public</u> is getting. We all share in the blame and if we get on with the task of the conceptual framework, we can put the matter in a better perspective without, I trust, any <u>organic</u> change in the system.

> Third, the accounting profession is reacting too slowly to the problem. With the maturity they now have, we can expect, and I believe we will get, better leadership from the Financial Accounting Standards Board.

Finally, at the SEC, we have drawn too artificial a distinction between the Office of the Chief Accountant and our Division of Corporation Finance. They overlap, or should overlap, more than we have so far recognized. For example, our initiative with respect to replacement cost accounting -- which has caused as much argument as anything we have done recently -- is universally regarded as an accounting matter. My own judgment, as of today, is that after one or two years of requiring this data, and thus causing some sophistication to develop in the presentation of such data, we should make such information a voluntary rather than a mandatory matter. Firms, protected by some form of safe harbor, could then provide such information in either a statistical or a narrative form.

Let me move to our regulation of mutual funds.

We have talked a lot this past year about a basic overhaul of investment company regulation, about the need to deregulate -- some could say its been nothing but talk.

I share the disappointment with many of you with the visible progress to date, but I believe that there has been a major change in the Commission's approach to investment companies.

We are attempting now to permit mutual funds to pay some distribution and selling expenses from their assets. Hearings, as you know, have been completed. The Commission will vote on a major new initiative in deregulating advertising rules and on a proposal to permit more reciprocal arrangements and sooner or later the Commission will have sensible paying-up rules.

I must state that I am far more convinced today than I was 16 months ago that a major change in our approach to investment companies is due. Disclosure, competition and independent directors must be substituted in wholesale doses for regulation.

I do respect very much those who worry about past abuses in the fund industry, and time may prove them correct. If we do ease regulation, the potential for abuses could be so great that regulation may need to be reimposed. But in this new era of competitive rates and of better monitoring, we cannot refuse to try to deregulate.

I said a few weeks ago that we are now involved in an intergovernmental effort to place all investment funds -- whether pension, mutual or bank trust funds -- under a single regulatory standard -- one that will rely far more upon disclosure and competition than upon restrictive regulation.

I suspect that the free enterprise system faces no greater challenge than to make these large sums available to the market system. We can only hope that the new administration at the Commission and elsewhere in government will quickly recognize the importance of the issue.

We have not, as I said, made the kind of progress that I hoped for one year ago -- but a 25-year old tradition of ever-greater regulation cannot and should not be erased in a few months.

We have begun the effort -- the Division of Investment Management is committed to the goal of rethinking the entire scope of regulation under the 1940 Act and the Directorate of Economic and Policy Research is providing guidelines for that effort.

My final remarks will deal with those who ask that the SEC's work be reappraised or who are strongly critical of our work.

The most biting criticism has been directed at our enforcement activities. Two recent articles sadden me because they so obviously lack the kind of scholarship that one expects from a law professor. To accuse dedicated, hard-working professionals of "inducing lawyers to sell out their clients" and of creating a "star chamber" without making even the most cursory personal survey of those alleged activities is demeaning to all scholars and at best, mischievous. Such critcism attracts attention and casts a cloud on the Commission, but offers no constructive commentary.

There are, of course, more knowledgeable critics of our enforcement efforts. Responsible lawyers and others have expressed their concerns privately and publicly.

Some say we too often change policies by ad hoc enforcement actions rather than by the more deliberate procedure of rulemaking and that as a result, we are changing rules retroactively.

Others worry that we prolong our investigations so long that any litigation that may ensue is of relatively minor consequence. The disruption, embarrassment, expense and even business loss that comes from prolonged exposure to accusations of securities laws violations, they complain,

constitutes a penalty imposed by the staff without regard to due process, without right of appeal and without even the Commission's knowledge.

That we do not notify parties that have long been under investigation when that investigation is over is also cited as an abuse.

And, finally, we are told that the staff is out of control, that enforcement policy (which is really investigative policy) is set entirely by the uncontrolled discretion of the Enforcement Division and that the Commission only gives a perfunctory ratification of the action when a given target refuses to yield to settlement pressures.

Well, as is so often the case, there is a little bit of "truth" and an equal amount of "untruth" in such criticism.

But in accepting the merit of some of these complaints, I do so on behalf of myself and the Commission -- not at the expense of our Enforcement Division.

Their dedication, innovative skills, willingness to work, integrity and appreciation of fair play deserve our praise not these too often vague charges. Where in government can you find any enforcement unit that has done so competent

a job in finding and stopping the violation of those laws withinits jurisdiction?

When and if investigators dwell too long or innovate too much in an investigation and if they are ever at any time "out of the Commission's control," the Commission deserves the blame, not them.

It is true that we as a Commission do not have enough information about what we are doing; our investigations do go too long and the Commission, in fact, does not exercise very much, if any, discretion in deciding how to allocate investigative resources.

The answer, of course, is that we should provide better information systems for the staff and for ourselves. We should spend more time listening to the notions, not only of Enforcement personnel, but those of all Divisions, as to which investigations are the more important and as to whether the regulatory or the enforcement path is the more appropriate way to get something done.

I have always found our Enforcement staff entirely pleased and indeed anxious to tell us what they are doing when we have the interest and take the time to listen.

All of the complaints I mention will become far less frequent when the Commission has the benefit of the kind of information that the Enforcement Division will now secure on an experimental basis with the new tracking system that they have developed.

As it is refined and aided by our new computer facility, the Commission can conduct regular planning sessions to review the various enforcement programs underway. Indeed, we should maintain, as Ralph Demmler has suggested, a permanent planning operation with representatives of each Division that can look ahead.

With such information regularly available, the Enforcement Division can tell targets of investigation when they are no longer under study. When a given investigation is too prolonged, it will be immediately apparent to the Division itself and remedial action can be taken.

The Enforcement Division does commence novel investigations and does engage in expanding traditional notions of what is and what is not a violation and of what is and what is not a security. That is their responsiblity and they do it well -- some say too well.

But, for my part, I would do nothing to dampen their ardor.

The proper response, as I see it, is to spend the time with the General Counsel's Office and others at an early stage of innovation and decide first, whether the goal is desirable, and, if it is, whether we should reach that goal by:

Enforcement action, or
By a rulemaking procedure, or
By seeking legislation.

Some may argue that the Commission should not intrude so early in the enforcement process, but the Enforcement personnel are no more anxious to waste their time than is anyone. If the Commission is not going to agree to a novel legal theory, it is far better to know that at an early date.

Several times during the past 16 months, I have been deeply troubled by the fact that we have ended someone's long and dedicated effort with a refusal to proceed.

Let me conclude this evening by responding to the remarks made by Secretary Blumenthal in New York yesterday. His address was labeled:

"The Capital Formation Process and the Securities and Exchange Commission"

Some feared his comments. They warned that the independence of the Commission was being threatened, that our role as enforcer of the securities laws would be compromised if we had the responsibility also to promote capital growth.

Well, the Secretary's speech was, in my view, right on target and welcome. Neither he nor I see the SEC's role as promoting capital formation. However, we do, more than any other agency, understand the capital markets and we should avoid any unnecessary interference with the free market economy and we should point out to the rest of government and to the public any regulations or tax policies that divert capital from one use to another use or that interfere with capital formation for no apparent good reason.

We have been trying to do just that for the past 16 months. On numerous occasions before Congressional committees and in public speeches, I have stated the obvious, that our tendency toward being a debt-based rather than an equity-based society is caused in some degree by tax policies that discriminate against equity policy.

We joined others in arguing that existing tax laws were effectively keeping pension funds, trust funds and mutual funds from dealing with options. With the law now changed, these funds can decide for themselves whether options should be part of their investment strategies.

We are similarly working with the Federal Reserve Board to better understand margin requirements that may discriminate in favor of or against market makers in stock or options trading.

Perhaps the most dramatic evidence of our new interest in economic analysis has been our recent willingness to permit options trading and stock trading to be conducted by the same firms on the same exchanges. By telling the industry that we may be willing to permit such activity, dramatic changes are occuring in the structure of all our trading markets.

Also, we have already launched studies on:

-- The impact of exchange trading in options.

-- The impact of short sales on securities practices.

-- The relative advantages of the dealer and auction markets.

-- Systematic changes in securities prices as an indication of fraud.

The Commission is utilizing the Directorate of Economic and Policy Research to develop a broad understanding of the economic environment in which the Commission operates in order that it may develop and apply a coherent regulatory

philosophy. The Directorate will eventually develop a model of the securities industry in order to permit identification of problems which are a function of the business cycle.

The Directorate has initiated studies of the economic impact of government regulation and tax policy on capital formation, and the economic effects of accounting rules. As part of this effort, a liaison with the Office of Tax Policy of the Department of Treasury has been established. Two priority agenda items are:

(1) Relating new Commission disclosure requirements that deal with the impacts of inflation to a revenue policy that will not tax corporate profits which, because of inflation, are not profits in the true economic sense; and

(2) Coordinating Legislative and Executive Branch efforts to eliminate the discriminatory tax policy that now favors corporate debt securities over corporate equity securities.

Let me return to Secretary Blumenthal's speech. He stated:

> What we must do now is reevaluate the complex of government rules, regulations and procedures affecting financial intermediaries to ensure that there is not, in our regulatory structure, somethings inhibiting the sustained flow of financing for investment.

We agree. We believe the "reevaluation" is underway - We hope other agencies will follow.

In my letter to President Carter I observed:

> The opportunity to service with the staff of the Securities and Exchange Commission has given me a great sense of personal satisfaction. I am confident that your Administration will develop the same high regard for their integrity and capacity.

To a very great degree, the capacity of the Commission results from the long-standing interrelations that have existed with the people in this audience. I congratulate you all, those within the Commission and outside, for the professionalism that is so highly regarded by others.

I appreciate very much my chance to be part of the effort.