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REMARKS TO
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"DISCLOSURE AND THE SEC"

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* THESE REMARKS, IN PART, CONTAIN EXCERPTS FROM REMARKS DELIVERED PREVIOUSLY TO THE DEAN'S FORUM, UCLA GRADUATE SCHOOL OF MANAGEMENT, LOS ANGELES, CA, APRIL 20, 1979 ("SOME NEW APPROACHES TO CORPORATE DISCLOSURE POLICY"), AND TO THE TREASURERS' CLUB, NEW YORK, NY, OCTOBER 31, 1979 ("THE SEC DISCLOSURE PROCESS IN A CHANGING ENVIRONMENT").

As a Commissioner of the SEC I am called upon to give speeches quite frequently. I accept these invitations because I believe it is important for regulators to express and explain their views. It is part of the process of accountability which public institutions need to maintain their legitimacy.

The ideas I want to share with you this morning concern regulatory reform and corporate disclosure policy. Deregulation is a clarion call in Washington today, but it often seems to be a slogan rather than a program which is both meaningful and responsible. Much which passes as deregulation is only re-regulation by the bureaucracy. Much which passes as regulatory reform is only an excuse for avoiding serious oversight and law revision by Congress.

There is an important interrelationship between investor confidence and capital formation which is at the heart of the SEC's concern for investors. In enacting the federal securities laws, Congress endeavored to stimulate the investment of capital in business enterprise by promoting the confidence of investors in publicly held corporations and the securities markets.

In taking action pursuant to the securities laws, the Commission must take into account the public interest as well as investor protection. Indeed, investor protection was deemed important enough to warrant special federal protection only because it is in the general public interest for investors to put private capital to work in the economy through the vehicle of securities purchases.

Accordingly, regulatory reform at the SEC should be directed at improving the climate for investment in private enterprise. In my view, our powers should be exercised in order to assist capital formation and strengthen the public securities markets. They should not be exercised merely for the sake of regulation or in order to impose on the business community governmental judgments as to how corporations and their managements should conduct their business affairs.

The SEC's authority to mandate what information public corporations must disclose to investors and shareholders derives from a number of different statutory sources. Initially, the Securities Act of 1933 ("1933 Act") required public corporations to make disclosures concerning their business and financial affairs only when engaged in public distributions of their securities. Then, the next year,

CONGRESS PASSED THE SECURITIES EXCHANGE ACT OF 1934 ("1934 ACT"), WHICH REQUIRED EXCHANGE LISTED CORPORATIONS TO FILE ANNUAL REPORTS WITH THE SEC AND TO MAKE CERTAIN DISCLOSURES IN PROXY SOLICITATIONS. IN 1964, THE UNIVERSE OF PUBLIC CORPORATIONS REQUIRED TO FILE ANNUAL AND PERIODIC REPORTS WITH THE COMMISSION WAS GREATLY EXPANDED BY WAY OF AMENDMENTS TO THE 1934 ACT. IN ADDITION, THE HOLDING OF THE SECOND CIRCUIT IN THE CASE OF SEC V. TEXAS GULF SULPHUR CO. 1/ PROSCRIBING THE MISUSE OF MATERIAL UNDISCLOSED CORPORATE INFORMATION BY INSIDERS AND THEIR TIPPEES CREATED A FURTHER IMPETUS FOR A SYSTEM OF CONTINUOUS DISCLOSURE BY PUBLIC CORPORATIONS.

THE COMMISSION'S DIVISION OF CORPORATION FINANCE IS CHARGED WITH ESTABLISHING REQUIRED DISCLOSURES FOR AND THEN REVIEWING VIRTUALLY ALL THE FILINGS MADE WITH THE COMMISSION PURSUANT TO THE 1933 ACT. SUCH DOCUMENTS ARE GENERALLY OCCASIONED BY THE INITIAL ISSUANCE OF SECURITIES TO THE PUBLIC. THE DIVISION LIKEWISE SETS POLICY FOR AND REVIEWS FILINGS UNDER THE 1934 ACT, WHICH GENERALLY PERTAINS TO PERIODIC AND OTHER DISCLOSURES WHICH MUST BE MADE BY COMPANIES ONCE THEY HAVE PUBLICLY ISSUED SECURITIES.

1/ 401 F.2D 833 (2D CIR. 1968), CERT. DENIED, 394 U.S. 976 (1969).

THE FLOW OF FILINGS IN THE DIVISION, WHICH INCLUDES PERIODIC REPORTS IS FORMIDABLE. IN 1962, THE DIVISION RECEIVED SOME 18,000 FILINGS. IN 1968 THE FIGURE WAS 38,000, AND IN 1979 IT WAS 52,000. 2/

IN ADDITION TO THE INCREASED FLOW OF FILINGS, FOUR MAJOR FORCES HAVE OPERATED TO CHANGE THE COMMISSION'S OUTLOOK ON THE WORK OF THE DIVISION. FIRST, CORPORATE FINANCIAL TRANSACTIONS AND RELATIONSHIPS HAVE BECOME INCREASINGLY COMPLEX. THERE HAS BEEN A PROLIFERATION OF CONGLOMERATE COMPANIES CREATED IN LARGE PART BY MERGERS AND TAKEOVERS. THE FINANCIAL MARKETS HAVE BECOME MORE COMPLICATED AND SOPHISTICATED, BOTH NATIONALLY AND INTERNATIONALLY.

SECOND, COMMUNICATIONS AND DATA ANALYZING TECHNOLOGY HAS PROGRESSED TO A POINT OF MAGNITUDE SUPERIOR TO THAT AVAILABLE JUST BRIEF YEARS AGO. ALTHOUGH THESE DEVELOPMENTS HAVE AUGMENTED THE COMPLEXITY AND EFFICIENCY OF THE PRIVATE FINANCIAL SECTOR, THE SEC HAS NOT ENJOYED ALL THE BENEFITS OF THIS IMPROVED TECHNOLOGY.

2/ FIGURES SUPPLIED BY THE COMMISSION'S OFFICE OR REPORTS AND INFORMATION SERVICES AND DIVISION OF CORPORATION FINANCE.

A THIRD FORCE FOR CHANGE IN THE DISCLOSURE PROCESS HAS BEEN CHANGING ACADEMIC THEORIES ABOUT THE MARKETPLACE, COUPLED WITH SOME SIGNIFICANT SEC STUDIES. INTRIGUING THEORIES ABOUT THE EFFICIENT MARKET, NEW METHODS OF ANALYZING CASH FLOW AND RISK, AND OTHER ANALYTIC TOOLS HAVE BEEN APPLIED TO WIDELY EXPANDED EMPIRICAL KNOWLEDGE OF THE FINANCIAL MARKETS. ACCOMPANYING THE NEW ECONOMICS HAVE BEEN SUCH FORMAL STUDIES OF THE GOVERNMENT-MANDATED DISCLOSURE SYSTEM AS THE WHEAT REPORT OF 1969, THE INSTITUTIONAL INVESTOR STUDY OF 1971, AND THE REPORT OF THE ADVISORY COMMITTEE ON CORPORATE DISCLOSURE OF THE SEC. THE PROPOSED ALI FEDERAL SECURITIES CODE, WHICH THE COMMISSION HAS BEEN EXHAUSTIVELY REVIEWING ALL YEAR, IN MANY WAYS RESPONDS TO THE NEW ACADEMIC THEORIES AND THOSE STUDIES BY SUGGESTING STATUTORY REVISIONS OF THE LAW APPLICABLE TO THE DISCLOSURE PROCESS. THIS IS A CHALLENGE FOR CHANGE WHICH THE SEC MUST TAKE SERIOUSLY.

A FOURTH IMPETUS FOR CHANGE AT THE COMMISSION IS THE REGULATORY REFORM MOVEMENT, WHICH INCLUDES THE INCESSANT PUSH OF THE OFFICE OF MANAGEMENT AND BUDGET, AND THE CONGRESS, FOR REGULATORS TO DO MORE WITH LESS. IN FACT, NOTWITHSTANDING THE EXPLOSION OF FILINGS THE SIZE OF THE DIVISION'S STAFF HAS REMAINED RELATIVELY CONSTANT SINCE 1962, A LEVELLING-OFF NOT WHOLLY COMPENSATED FOR BY EFFICIENCIES OF COMPUTER-BASED AUTOMATION.

LET ME NOW LIST THE CHALLENGES WHICH THESE FOUR FACTORS AND RELATED DEVELOPMENTS PRESENT TO THE OPERATIONS WORK OF THE DIVISION OF CORPORATION FINANCE. AS A RESULT OF THE VOLUME OF FILINGS AND THEIR COMPLEXITY, A STAFF OF THE SIZE OF THE DIVISION CANNOT SCRUTINIZE EVERY FILING WHICH COMES IN. FURTHER, WITH DECENTRALIZATION IN MANAGEMENT IN ORDER TO HANDLE THE WORKLOAD, THERE HAS BEEN TOO GREAT A RISK OF INCONSISTENT COMMENTS AMONG THE REVIEWING BRANCHES.

IN ADDITION, THERE IS A NEED FOR MORE RAPID RESPONSE IN ASSIMILATING THE OVERALL TRENDS IN DISCLOSURE AND IN PROMPTLY DISSEMINATING NEW POLICIES BOTH WITHIN THE DIVISION AND, WHERE APPROPRIATE, TO THE PUBLIC.

ALSO, FILINGS WITH THE COMMISSION NEED TO BE BETTER INTEGRATED AND FURTHER DISSEMINATED BY THE SEC. FILINGS UNDER THE 1933 AND 1934 ACTS ARE STILL UNNECESSARILY DUPLICATIVE. MORE WORK MUST BE DONE TO INTEGRATE DISCLOSURE UNDER THESE TWO STATUTES SO THAT ANY ONE FILING CAN SERVE THE MAXIMUM PROPER REGULATORY PURPOSES.

FINALLY, THE FILINGS COLLECTED BY THE DIVISION ARE NOT AS WIDELY USED BY EITHER THE PUBLIC OR THE STAFF AS THEY MIGHT BE. CONSIDERING THE POTENTIAL VALUE OF THE FILINGS, INDIVIDUALLY, OR WHEN ARRAYED AND ANALYZED IN A CUMULATIVE MANNER, MODERN TECHNOLOGY SHOULD BE PUT TO GREATER USE IN THEIR DISSEMINATION.

I THINK THERE ARE TWO TRENDS RUNNING THROUGH THESE CHALLENGES WHICH NEED TO BE RECOGNIZED AND RESOLVED. THE FIRST TREND IS THE INCESSANT, PROBABLY ACCELERATING, PACE OF CHANGE. SUCH CHANGE IS PRESENT IN FINANCIAL AND CORPORATE BUSINESS TECHNIQUES, IN RELEVANT ACADEMIC KNOWLEDGE, IN DATA PROCESSING TOOLS, AND, FROM TIME TO TIME, IN CONGRESSIONAL REGULATORY PRIORITIES.

THE SECOND TREND IS THE PRESSURE FOR PRODUCTION, IN THE BUSINESS SENSE, OF THE CONTINUOUS, UNIFORM, AND HIGH QUALITY PROCESSING OF A LARGE FLOW OF INPUT, NAMELY THE INFLUX OF SOME 52,000 FILINGS A YEAR. RESPONDING TO THESE TRENDS IS A DIFFICULT, FUNDAMENTAL MANAGEMENT TASK.

THE COMMISSION IS RESPONDING BY A CHANGE IN THE ORGANIZATION AND FUNCTIONING OF THE DIVISION WHICH CONTAINS SOME INTERESTING ELEMENTS.

PERHAPS OF GREATEST IMPORTANCE IS THE FRANK REGULATORY ACKNOWLEDGMENT THAT NOT ALL FILINGS CAN BE REVIEWED. WITH RESPECT TO SOME FILINGS THE DIVISION WILL SHIFT TO A MODE IN WHICH SCREENING AND SELECTION TECHNIQUES WILL BE USED IN ALLOCATING STAFF TIME.

OF COURSE, THE RICHEST GROUND FOR A REGULATORY REFORM ELIMINATION OF DUPLICATIVE FILINGS IS IN THE INTEGRATION OF 1933 AND 1934 ACT DISCLOSURE. ONE IMPORTANT TASK FORCE WORKING ON THIS PROBLEM IS ADDRESSING WAYS TO SIMPLIFY THE 10-K ANNUAL REPORT AND TO ADAPT ITS PARTS FOR INCORPORATION BY REFERENCE IN OTHER FORMS.

A MAJOR ELEMENT IN THE PLANNING OF THE DIVISION OF CORPORATION FINANCE IS THE ADDITION OF A NEW OFFICE IN OPERATIONS, TO OVERSEE THE TRAINING AND UNIFORMITY OF WORK AND EXCELLENCE AMONG THE LINE BRANCHES. IN ADDITION, THE SIZE OF THE CURRENT LINE BRANCH IS GOING TO BE INCREASED TO A SIZE THAT WILL PERMIT THE BRANCH'S ONGOING REVIEW WORK TO BE DONE BUT ALSO FREE SOME BRANCH PERSONNEL FOR TASK FORCE WORK. ALSO, COMPANIES IN EACH MAJOR INDUSTRY WILL BE CENTRALIZED TO THE EXTENT POSSIBLE, PROBABLY OVER THE COMING YEAR, INTO ONE BRANCH, WITH ROUGHLY SEVEN INDUSTRIES PER ASSISTANT DIRECTOR.

WITH REGARD TO DATA MANAGEMENT, THE OPERATIONS SECTION OF THE DIVISION IS EMBARKED ON AN EFFORT WHICH, GRADUALLY, SHOULD RESULT IN THE ENHANCED AVAILABILITY, IN GENUINELY USEFUL FORM, OF FILINGS TO THE PUBLIC.

THE FINAL ELEMENT OF THE DIVISION'S STRATEGY FOR ADAPTING THE DISCLOSURE PROCESS TO A CHANGING ENVIRONMENT WILL BE AN INCREASED EFFORT TO PROMULGATE DISCLOSURE POLICY PROSPECTIVELY, SO AS TO AVOID, WHERE POSSIBLE, THE MORE SEVERE AND COSTLY AVENUE OF POST HOC ENFORCEMENT PROSECUTIONS.

ALTHOUGH THE PROPOSALS I HAVE OUTLINED FOR YOU THIS MORNING ARE AN EFFORT AT REGULATORY REFORM, THEY DO NOT ANSWER THE ULTIMATE QUESTION: IS THERE A NEED, AS WE ENTER THE 1980S, FOR A GOVERNMENT MANDATED DISCLOSURE SYSTEM FOR SECURITIES?

I FRANKLY HAVE TO ADMIT THAT INVESTOR PROTECTION IS ONLY ONE AMONG MANY SOUND REASONS FOR A SYSTEM OF GOVERNMENT MANDATED DISCLOSURE BY PUBLIC COMPANIES. THEREFORE, WHILE I BELIEVE ALL WE CAN DO AT THE SEC IS TO USE OUR PRESENT STATUTORY TOOLS IN A SENSIBLE, REFORMED WAY, I INCREASINGLY WONDER WHETHER OUR STATUTORY FRAMEWORK CONTINUES TO BE RELEVANT.

INDEED, WITH THE INCREASING INSTITUTIONALIZATION OF THE PUBLIC SECURITIES MARKETS, THAT PUBLIC INVESTOR THE SEC IS MANDATED TO PROTECT IS IN DANGER OF BECOMING A LEGAL FICTION. AND, IF THE CONTINUED NEED FOR A GOVERNMENT MANDATED DISCLOSURE SYSTEM FOR PUBLIC CORPORATIONS IS FOR REASONS OTHER THAN OR IN ADDITION TO INVESTOR PROTECTION, SUCH A JUDGMENT SHOULD BE MADE AND ARTICULATED BY ELECTED OFFICIALS WHO ARE DIRECTLY ACCOUNTABLE FOR THE POLICIES OF GOVERNMENT.