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KEYNOTE FOR "THE SEC SPEAKS"

An Address by

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Securities and Exchange Commission

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Practising Law Institute
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My Fellow Lawyers:

Try, if you will, to look at this scene through my eyes. Imagine that you were Chairman of the SEC and that you saw before you some twelve hundred canny lawyers (members of a notoriously parsimonious clan) each of whom had paid a tidy sum in real -- albeit tax-deductible -- money for the dubious pleasure of listening to hour after hour of talk about the quaint and curious ways of the agency over which you happen to preside. For the first few seconds or so the thrill of it all might go to your head.

But if you were a good (or at least an experienced) lawyer, you'd snap out of it quickly. You would realize that the crowd was there to pay a tribute of a sort not to you, nor to your colleagues, nor to the SEC in general, but to the SEC in particular -- for all that it has done for lawyers and their bank accounts.

Since I practiced in New York and was given in my youth to writing and talking about legal and financial subjects, I cameto know a good bit about the Practicing Law Institute and its programs. That experience leads me to

doubt that many of you are here out of idle curiosity, a disinterested thirst for learning, or a vague, unfocused desire to add to your legal culture. That sort of thing is better done in libraries. Unless matters have changed radically since my days at the bar, most of you are here because you think that this program will give you some practical, down-to-earth information of use to you in your daily work. That is a natural and a laudable motive for self-improvement. And I hope that you get a good strong dose of the practical know-how that you seek. I should warn you not to expect any of this practical know-how from me. In the interest of full disclosure, I always tell lawyers that I spent the first 10 years of my professional life becoming a tax lawyer. Then I spent the next 20 years becoming a lawyer, and this is no time for me to become a securities lawyer.

Beyond practical know-how, I do hope that many of you find some real intellectual stimulus in these talks and that you arrive at a deeper and hopefully a more sympathetic understanding of the SEC's version of the administrative

process. It is even possible that some of what is said here tonight and tomorrow may make some of you reflect on the meaning of it all. Those to whom that happens will have had an educational experience.

Be it educational experience or practicalities of the trade or a fertile combination of the two (as it ideally should be), a program such as this would have been inconceivable when I was a young lawyer.

There was an SEC in those days. And there was a PLI too. But both were relative infants. And neither had much to do with the other. The PLI of that era was a rather provincial New York City affair that ran bread and butter courses on how to take the bar examination, how to draw pleadings, how to try a case, how to take an appeal, how to evaluate a negligence claim, and how to track down a deadbeat. There was little scope for the esoteric. And the SEC was very much on the esoteric side. Lawyers and well-informed citizens generally knew that there was some New Deal agency in Washington that poked around in the world of high finance and was supposed

to administer a strange body of statutes aimed at bringing truth to investors. That was all most lawyers knew about the SEC and it was all they needed to know.

During the Depression and World War II new public financing (and that was then the area in which the securities statutes had their principal -- indeed, one might also say their exclusive -- thrust) was at an extremely low ebb. Not much scope for the ordinary lawyer there. As for the trading markets, they were in the doldrums. Such legal work as they generated was for the most part in the hands of a small elite with traditional links to the securities business. The Commission itself seems to have spent most of its time and energy on the Public Utility Holding Company Act. And significant though that statute was -- and is -- it was scarcely a bread and butter topic for practicing lawyers, few of whom represented public utility holding company empires. Then as now the Holding Company Act made a poor drawing card for mass meetings.

Prospectuses, registration statements, periodic reports to the Commission -- were strange rituals, black magic known only to an initiated handful. As for investment companies, they were for Boston Brahmins and a small coterie of Wall Street lawyers.

Your presence here shows how different is the world of today. Securities regulation has become a basic legal staple. Rivers of ink are spilled on this topic. An endless stream of books, articles, opinions, releases, law school courses, and seminars for the practicing bar testifies to the field's contemporary significance. Today's American lawyer simply has to know something about securities law in much the same way that he has to know at least the rudiments of civil procedure whether he is a litigator or not.

The lawyer with a so-called general practice who has little or nothing to do with publicly held business units is quite likely to be consulted by an investor who thinks he has been swindled and who presents him with a set of facts whose possible legal consequences can be appreciated only

by somebody who has a pretty fair grasp of the federal securities laws. And remember that the investment in question can be -- and often is -- one in a small, closely held business. Rule 10b-5 under the '34 Act and Section 5 of the '33 Act reach far, far down into the world of the corner drugstore and the neighborhood tavern. Even the criminal bar has reason to be grateful to the Commission for its splendid accomplishments in supplying the criminal bar with clients who are able and willing to pay for legal services.

Sympathy for you in the ordeal to which you are about to subject yourselves has led me to begin with a touch of levity. But I can't let go of you on that light note. I am sorry to say that I have a few serious points to make, a few things on which I'd like to report to you, and a few things on which to ask your help.

During 1971, between 3 and 4 times as much new money was raised on the equity markets than during any year prior to 1969. And the rate at which new issue filings are coming in is running at the rate of 3200 per year and still going

up. In the face of this pressure the average time it now takes to get out a letter of comment has been cut down to 12 days for a company that has filed before and to almost 45 days for a company filing for the first time. This has been accomplished in part by the diligence and good management of Alan Levenson and his associates in the Division of Corporate Finance and in part by putting greater reliance on the lawyers who prepare registration statements. You have responded and to deal with the rising tempo of securities activity we need your help in other areas. After all, we at the SEC, some 1,500 strong, are really a very small band to protect the interests of 100,000,000 Americans, who as owners and as beneficiaries have a stake in the values established in our securities markets. We are charged with regulating the markets, supervising the activities of some 5,000 broker-dealers, and 3,500 investment advisers, with regulating 1,300 investment companies, bringing enforcement actions to assure financial responsibility and fair dealing, following 1,000 corporate reorganizations a year, obtaining full and accurate financial

filings from 10,000 corporations, watching the trading of another 10,000 companies, overseeing the development and application of principles of accounting and financial reporting, developing a body of law on fair and unfraudulent dealings in any and all securities and through the proxy process and otherwise developing and applying a body of law based on corporate democracy and fiduciary obligation governing the relationship between directors, officers and stockholders. Clearly, all this could not be done without the help of lawyers, as well as the accountants, securities analysts, and others, in ways too numerous to catalogue at this time. Since we count on you to interpret and enforce the rules we develop to protect investors, we have an obligation to make our rules as definite and certain as possible. The true value of our disclosure requirements depends on the accuracy and precision of your work in registration and proxy work. As we require new rules, or as disclosure is needed on new activities, or in greater depth, we need your help in making these requirements practical and effective. To facilitate all this we maintain an open-door

policy to help in your problems. We solicit your help on our problems and we want to be flexible and responsive to practical needs as long as the requirements for investor protection are met.

Our new Rule 144 about which you'll hear a good deal tomorrow morning will, I think, bring order and rationality to the proverbially confused and confusing secondary offering area. But that is not the only field that needs to be tidied up. There are others in which more specificity and more predictability can be attained without sacrificing the real substance of investor protection.

As one eminent student of administrative law puts it:

> "Where a statute allows wide range for policy choice the agency's failure to define policy may give rise to evil consequences and bring administrative delegation into disrepute. A broad delegation of power is not only a power, it is a summons to create order." 1/

1/ The quotation is from Jaffe, Judicial Control of Administrative Action 49 (1965).

That summons I intend to heed.

For example, I can assure you that we are going to make the same kind of sustained effort to simplify the private offering exemption that we made to convert the restricted stock rules from theology to arithmetic. I hope and believe this one will not take as long. Let me tell you why I think this is so important. Our balance of payments and our currency would be under even much more severe pressure than it is today were it not for our high technology exports. Practical application of new technology and economic and social innovation is essential to our national economic progress. This requires venture capital. New ventures are intrinsicly risky. Today, about 40% of our new registrations are companies seeking their first public financing. A large proportion of these are start-ups. With no operations and no record they entail the greatest risk of all. Our inquiry into the recurring hot issue phenomenon will go into the public hearing phase at the end of this month. The purpose of this inquiry is to see what we can do so that the rising number of start-up offerings which

we are now seeing will not sow as many seeds of disillusionment among the investing public as were planted in the hot issue booms of 1962-63 and 1967-69. We believe this can be accomplished by requiring more meaningful disclosure, and encouraging higher underwriting standards, and we are going to consider whether there are any regulatory measures over the distribution and after-market in these new issues which would afford greater investor protection in this dangerous area. At the same time we don't want to dry up or even discourage venture capital. Indeed, I believe that more meaningful disclosure can play an important role in national economic policy by concentrating scarce venture capital on ventures of greater social, economic, and technological significance. You will have your part to play in this. You will find that boilerplate language and routine exposition of risk, the experience of principals and the market to be exploited, and so on, will increasingly be questioned and bounced back at you. Even after we vastly improve prospectus disclosure on new and young companies, I believe it will be desirable from the standpoint of

investor protection for new venture money to come not only from people who invest a few thousand dollars on the basis of a prospectus we have cleared, but also from sophisticated individuals and institutions who will have the knowledge, opportunity and ability to dig in more deeply and evaluate a new venture even more effectively than can be done by reading a printed prospectus. It may be better for venture money to come in larger chunks from investors having this access to information and the ability to analyze it than from people who really can't afford to take the high risk involved in new technology and other new ventures.

For this reason I believe that the private offering channels should be kept open but under strict -- albeit more objective -- controls. We will see what can be done to define public offering in a manner which will give a small group of knowledgeable individuals or institutions greater assurance as to when and how they can band together to provide seed money and to meet immediate cash demands of young companies in a manner which does not require the delays imposed by accounting and registration considerations. We are

hopeful that some more objective and clearly defined test of the circumstances which can be relied on as qualifying a financing under the private offering exemption -- embodying such elements as sophistication, access to information, and perhaps other elements, -- will frame a private offering formulation which will, as Rule 144 did, provide greater certainty and increased information for investors at the same time as it keeps open the channel of risk money.

In another front, an increasingly large proportion of new issues have taken the form of tax sheltered packages -- oil, real estate, feeding and breeding cattle, citrus and other agricultural ventures. We have a Congressional mandate to recommend legislation on oil and gas packages. All of these tax sheltered packages have special problems -- the need to sort out and accurately disclose the difference between tax and economic aspects, special conflicts of interest and so on. We are establishing a specialized branch to process these tax sheltered registrations. During the next few months as we work to develop legislative recommendations and appropriate disclosure requirements, we will need the help of those ingenious members of the bar who have

designed these esoteric packages.

Several weeks ago I persuaded two former Chairman of the Commission, Manuel Cohen and Ralph Demmler, and John Wells, a highly experienced senior partner in the New York firm of Royall, Koegel & Wells, to serve as a panel to take a fresh and detailed look at our enforcement policies and practices and consult with the Commission on any measures which, in their experienced judgment, might improve the value and effectiveness of our enforcement procedures. A major purpose of this exercise is to guide the staff and the Commissioners in self-examination and self-improvement. This panel has already met two or three times, engaging in dialogue with members of the staff. It will seek and sift suggestions from the securities bar. Those of you who know Messrs. Cohen, Demmler and Wells will know that we can expect them to be constructive as well as searching, practical as well as imaginative.

In these and in other endeavors the Commission needs your ideas. I am pleased to see that those who designed this program left abundant room for questions and dialogue.

Don't be passive receptacles for the views of those of us who will be addressing you. Challenge us. Make us do some hard thinking. It will be good for us, good for you, good for the Commission, and good for the law.