U.S. Securities and Exchange Commission
Washington, D.C. 20549 (202) 272-2650

News Release

Remarks of

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Before the
72nd Annual Meeting and Conference of the
Investment Dealers Association of Canada

St. John's, Newfoundland, Canada
June 20, 1988

THE U.S.-CANADIAN RELATIONSHIP IN SECURITIES REGULATION: A MODEL OF REGULATORY COOPERATION

The views expressed herein are those of Chairman Ruder and do not necessarily reflect those of the Commission, other Commissioners, or the staff.

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I. Introduction

It is a pleasure to be in Newfoundland and to have the opportunity to speak before the Investment Dealers Association of Canada. Your impressive group of securities professionals provides a strong base for cooperation between U.S. and Canadian securities markets.

Over the past years, the international securities markets have become more complicated and sophisticated. Innovations in the types of financial instruments and in mechanisms for trading, coupled with much stronger interrelationships among markets have created an expanding and new worldwide financial structure. As market participants, you are aware of the enormously expanded range of business opportunities that globalization of the securities markets has presented. You also may be aware, and in some respects, painfully so, of the difficulties of operating in a number of different markets. A dealer, for example, often subjects itself to different regulatory structures and business customs. In a similar sense, regulators in the international markets can be frustrated by differences in regulatory structures and differing levels of cooperation with their international counterparts. As a result, achieving greater harmony among diverse regulatory systems may indeed be the biggest challenge international regulators will face in the next decade.

The relationship that is evolving between the Canadian and U.S. securities markets and their regulators should serve as a

model for fostering similarly close relationships among all international markets, and as Chairman of the United States Securities and Exchange Commission ("the Commission") I am proud to be a participant in that evolution. Canadian and U.S. securities regulators historically have had great mutual respect for each other, and that respect has resulted in a high level of cooperation and assistance.

II. Disclosure

Canada and the United States share a common border and have strong economic ties. The development of our governmental systems at the provincial, state, and federal levels has yielded remarkable similarities in the policies upon which our respective corporate governance and securities regulation are based. In the important area of regulating the issuance of securities, both systems have as their cornerstone full and fair disclosure. 1/ Both systems prohibit primary distributions of securities prior to the filing of a disclosure document with the appropriate regulatory body. Disclosure requirements are similar and in both systems liability for misrepresentations in prospectuses is imposed. The accounting standards applied have much in common 2/ and both systems have

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1/ Additionally, many provincial and state authorities conduct merit reviews of the offerings to a lesser or greater extent.

2/ Canadian requirements are not as extensive, however, and they include a few significant differences in accounting measurements.

regular reporting requirements. In the takeover area, both systems have similar procedural and disclosure requirements.

Comparisons between U.S. and Ontario law provide the best example of similar regulation of extraterritorial securities distributions. Under both regulatory schemes, exemptions from certain requirements are available if reasonable steps have been taken to ensure that an offering of securities comes to rest outside the jurisdiction. 3/

The Commission is continuing its efforts to ease registration and reporting burdens resulting from differences in national disclosure standards. For example, in 1985 the Commission issued a concept release that requested comment on ways to accommodate multinational securities offerings and to harmonize the prospectus disclosure standards of the United States and other countries. 4/ Comment was sought on two possible approaches -- a reciprocal prospectus approach and a common prospectus approach. Under the reciprocal approach, each of the jurisdictions would accept the disclosure documents prepared in the issuer's domicile. Under the common prospectus

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3/ See Securities Act Release No. 4708 (July 9, 1964). The Commission is currently revisiting Release No. 4708 and has proposed for public comment a regulation (Regulation S), including safe harbor rules, that if adopted would supersede Release No. 4708. The proposed new rules set forth specified non-exclusive conditions under which the Commission would not seek to apply the registration provisions of Section 5 of the Securities Act of 1933. See Securities Act Release No. 6779 (June 10, 1988).

4/ Securities Act Release No. 6568 (February 28, 1985).

approach, the jurisdictions would agree to use common disclosure standards. The majority of commentators favored the reciprocal approach, primarily because of its ease of implementation.

The Commission's staff is currently working with foreign regulators, including regulators from certain Canadian provinces, to plan an experimental approach utilizing the reciprocal concept. The experiment will probably involve offerings of world class issuers and initially will utilize investment-grade debt offerings because trading in such debt focuses in large part on yield and rating, rather than upon issuer information. Rights and exchange offers will probably form another part of the experiment because U.S. investors frequently are denied the ability to participate in such offerings by foreign issuers who are unwilling to incur the cost of registration.

Canada is seen as a likely partner in a reciprocal approach because Canadian disclosure and accounting requirements are more similar to U.S. requirements than those of most other countries. While I believe there are a number of significant issues to resolve before the reciprocal prospectus approach can be adopted between Canada and the U.S., I also believe that the approach is a good one because it can take into account the different Canadian business and disclosure practices without compromising the protection of U.S. investors.

III. Access to Markets

Disclosure is not the only area in which our securities markets and practices have become more integrated. As you all are no doubt aware, the Canadian federal and provincial governments have in recent years begun to reconsider their policies on whether national treatment should be accorded to foreign firms. I applaud the recent liberalizing moves that were part of what the media have labeled the "Little Bang." At the federal level, the result has been much less restrictive legislation to monitor and review foreign investment in Canada. In Ontario, the result has been an easing of restrictions on foreign financial institutions' participation in the securities markets. As I understand the new federal rules, since June 30, 1987, foreign entities have been permitted to own up to 50% of a Canadian securities dealer and after June 30, 1988, foreign firms will be allowed to own 100% of a Canadian securities dealer. Further, since June 30, 1987, foreign securities firms have been permitted to register with the Ontario Securities Commission and, after June 30, 1988, they will be able to operate in Ontario as full-service dealers. Similarly, in the United States, foreign ownership of and registration as broker dealers is permitted.

Efforts are also underway to facilitate the cross-border sale of investment company shares. The Commission is exploring informally with Canada and members of the European Economic Community the possibility of bilateral treaties for the

reciprocal sale of investment company shares, a concept favored by the European Federation of Investment Companies and also of interest to the Japanese.

Opening national boundaries to participation by foreign companies assists in the influx of new capital, increases the efficiency of the world's capital markets, and provides new investment opportunities for the public. I am pleased that progress toward permitting these developments is occurring.

IV. Market Linkages and Information Sharing

Canadian and U.S. regulators and markets also have been very successful in implementing a number of other cooperative initiatives. For example, at the self-regulatory organization level, several electronic trading linkages between Canadian exchanges and U.S. exchanges have been operating for several years. The first of these links was established between the Montreal Stock Exchange and the Boston Stock Exchange, and began operating in 1984. That linkage was the first arrangement giving members of a Canadian exchange direct electronic access to a U.S. exchange.

The first linkage between a Canadian market and a primary U.S. market, rather than a regional exchange, began operating in 1985 between the Toronto Stock Exchange and the American Stock Exchange. This agreement is a two-way linkage, enabling members of both exchanges to execute trades in certain securities in the linked market. The Toronto Stock Exchange

also entered into a two-way linkage agreement with the Midwest Stock Exchange in 1986.

To support these trading linkages, the exchanges' affiliated clearing entities have entered into corresponding clearance and settlement linkages. The Commission staff has reviewed linkages between the National Securities Clearing Corporation ("NSCC") and Trans Canada Options and between NSCC and the Canadian Depository for Securities ("CDS"). The Midwest Clearing Corporation/Midwest Securities Trust Company has linkages with CDS and with the Vancouver Stock Exchange Services Corporation.

As part of its review of trading linkages generally, the Commission staff has insisted upon appropriate information sharing agreements. Because intermarket linkages increase the integration of trading in U.S. and foreign markets, the Commission has taken the position that approval should be conditioned on the development of routine surveillance and information sharing agreements between the linked markets. The Commission also has looked for assurances that there are no barriers to the exchange of investigatory information between the relevant foreign regulatory body and the Commission.

The agreements between U.S. markets and several Canadian exchanges are prime illustrations of the sort of international cooperation that will make the task of enforcing our respective regulatory schemes more manageable. For example, approvals of the TSE-Amex trading linkage were conditioned upon agreements

providing for routine exchange of data essential to the exchanges' surveillance programs. Additional information is provided upon a "reasonable request." In investigations of linkage transactions the exchanges have agreed to "cooperate fully" and use their "best efforts" to obtain information from their members.

One of the Commission's primary concerns in reviewing this linkage was the Canadian blocking statute, a statute which might be used by the Canadian government to prevent information sharing. As a result of this concern, the Commission sought and received assurances from the Ontario Securities Commission that, in light of the similarity between the two countries' regulatory schemes and customer protection objectives, the Canadian government would be unlikely to use the blocking statute.

An important example of how intermarket cooperation can accommodate different regulatory requirements is the Commission's approval in 1986 of changes to the Options Clearing Corporation's ("OCC") rules that provide the OCC with authority to admit Canadian broker-dealers in a special membership status. The rule change enables firms to participate directly in the OCC as long as they comply with the financial reporting and responsibility standards of their home country. Although Canadian firms previously had been eligible for membership in the OCC, they were subject to the same membership qualifications and standards, and financial and

operational requirements, that apply to U.S. clearing firms. However, after the rule change the OCC was authorized to accept certain financial reports audited pursuant to Canadian accounting standards, and to accept Canadian members who follow the minimum capital requirements of the Investment Dealers Association of Canada, instead of the Commission's net capital rule. To facilitate monitoring of such Canadian members, the OCC also developed information sharing procedures with the relevant Canadian regulatory authorities.

V. Enforcement Initiatives

Enforcement of securities law violations involving cross-border activities is one of the most significant issues faced by regulators of globalized markets. A major problem in enforcing national securities laws in an internationalized securities market is the collection of evidence located abroad. As securities activities in foreign countries by individuals and entities under a country's regulatory jurisdiction increases, regulators of that country face numerous obstacles in collecting evidence necessary in their investigations of securities law violations. The U.S. Securities and Exchange Commission has increasingly relied on the negotiation and implementation of memoranda of understanding and other agreements with foreign regulatory authorities to enhance our ability to obtain vital information located abroad. The Commission has recently not only increased its efforts to negotiate bilateral enforcement agreements, but has also been

active in various international forums organized to encourage greater international cooperation in securities law enforcement.

One of the organizations established to foster international communication in numerous securities law areas is the International Organization of Securities Commissions ("IOSC"), which has a membership that includes regulators from all over the world. I am pleased to note the strong support given to the IOSC by both the Quebec and Ontario Securities Commissions. In November 1986, the Executive Committee of the IOSC adopted a resolution providing that, to the extent permitted by law, signatories to the resolution will provide assistance on a reciprocal basis for obtaining information related to market oversight and protection of each nation's markets against fraudulent securities transactions. Twenty-three members of the IOSC have signed the resolution.

The Commission also has been an active participant in the Organization for Economic Cooperation and Development ("OECD"), which has proved to be a useful multilateral forum for discussing information requirements and international evidence gathering relating to securities. In 1987 a questionnaire was sent to all member countries on extraterritorial information requirements and a draft report on the responses was circulated in February, 1988. The responses to the questionnaire have provided an excellent vehicle for exploring the informational needs of the various international market regulators. The

responses revealed several interesting facts about the world's securities markets. First, all of the countries that responded have specific securities legislation or laws of general applicability that are intended to prevent securities-related fraudulent, deceptive, or manipulative acts and practices. Second, all of the respondents recognize that cross-border trading violating domestic laws will almost inevitably require regulators to seek information from beyond the borders of the enforcing nation. Finally, all of the countries that responded expressed a willingness to provide assistance to other member countries.

While the work in these international forums progresses, the Commission has often been able to obtain information from regulators of other markets on an informal case-by-case basis. For example, in one of the Commission's most significant insider trading cases, the Commission secured the informal cooperation of Bahamian authorities in uncovering insider trading by Dennis Levine. At the request of the Commission, the Bahamian Attorney General made a finding that a bank from which the Commission sought certain trading records would not violate bank secrecy laws by disclosing the identity of an account holder and the details of his securities trading. As a result, the Commission was able to obtain account information from Levine's Bahamian bank linking him to suspicious securities trading. Similarly, the Commission recently received informal assistance from Spanish authorities in an

investigation of boilerroom operations and from French authorities in identifying telephone subscriber information needed to identify individuals involved in an alleged insider trading scheme.

International forums, such as the IOSC and the OECD, and informal arrangements with other regulators are helpful and necessary, but for day-to-day enforcement activity we believe the best approach is to negotiate bilateral memoranda of understanding. These MOUs, as they are known in Commission parlance, provide detailed procedures and guidelines for obtaining information in a reasonably efficient manner. They also assist in developing: (1) a framework for cooperation; (2) greater experience in addressing international securities law issues; (3) improved lines of communication; and (4) improved working relationships. All of the Commission's MOUs make assistance available without regard to whether the subject matter of the request involves an offense under the laws of the requested authority - the so-called "dual criminality" provision.

The Commission entered into its first MOU in 1982 with Switzerland. Prior to that time, the Commission had relied on the 1977 Treaty on Mutual Assistance between the U.S. and Switzerland to obtain foreign-based information. 5/ This

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5/ Mutual assistance treaties between the U.S. and other countries cover criminal matters and generally require that the violation under investigation constitute an offense under the laws of both the signatories.

treaty requires dual criminality, however, and at that time insider trading was not a violation of Swiss law. The purpose of the Swiss MOU was to provide "mutually acceptable means" for the Commission to obtain information in insider trading cases that had not been easily obtainable under the Treaty because of the dual criminality provision. The Swiss MOU provides a mechanism for Swiss banks under certain circumstances to disclose information to the Commission without violating the Swiss bank secrecy laws. When recently enacted Swiss insider trading legislation goes into effect in July of this year, the Swiss MOU will no longer be necessary and assistance will be provided under the 1977 Treaty and Diplomatic Notes exchanged by the two countries on November 10, 1987. The Diplomatic Notes specifically provide that the Commission can use the Treaty to obtain assistance in investigating possible insider trading violations, whether or not the investigations result in the institution of criminal proceedings.

MOUs have also been signed with Japan, the United Kingdom, and several Canadian provinces. The Commission entered into the MOU with the Securities Bureau of the Japanese Ministry of Finance in 1986. It provides that each agency will assist the other's "respective requests for surveillance and investigatory information on a case-by-case basis." The Japanese MOU designates a specific contact person in each agency to enhance regular communication and processing of requests. Although the Japanese MOU is less specific than the other MOUs, it has

proved to be adequate when put to the test of a Commission request for information.

In 1986, the SEC, the U.S. Commodity Futures Trading Commission, and the United Kingdom Department of Trade and Industry entered into an MOU which is viewed as a first step in efforts to establish a comprehensive understanding for bilateral cooperation between the U.S. and the U.K. relating to securities regulation. The U.K. MOU makes assistance available in matters involving insider trading, market manipulation, and misrepresentations relating to market transactions. It also provides for exchange of oversight information on such matters as the operational and financial qualifications of investment businesses and brokerage firms. The Commission has on numerous occasions received and provided assistance and information under the U.K. MOU.

Most recently, the Commission and the securities commissions of Ontario, Quebec, and British Columbia entered into an historic information-sharing agreement which should be viewed as a model for future bilateral and multilateral information-sharing agreements. This agreement is by far the most comprehensive to date, exceeding the scope of assistance available under and subject matter covered by other MOUs to which the Commission is a party. The agreement states that the signatories will provide each other with the fullest assistance possible and that assistance will be available in the full range of cases investigated by the signatories. The

agreement is unique because it provides that the regulatory agency from whom information is being sought will, when necessary, make use of its compulsory subpoena authority to obtain information requested by one of the signatories.

Other than Quebec, none of the signatories currently has the authority to utilize compulsory authority without a showing that a violation of their domestic laws may have occurred. For instance, at present, the Commission's authority is limited to providing information the Commission already has in its files or that it can obtain through voluntary cooperation. Therefore, the Commission has recommended that the U.S. Congress enact legislation authorizing the Commission to conduct investigations on behalf of foreign countries. I believe that when this legislation is enacted, it will greatly enhance the Commission's enforcement efforts, as well as the efforts of other countries.

VI. Conclusion

Our two countries have enjoyed mutually beneficial and fruitful relationships in many areas. I believe that the high level of cooperation and assistance among U.S. and Canadian securities regulators should serve as a model for development of international mechanisms to oversee and regulate international securities trading. Through the development of close, working relationships such as the relationship that exists between the U.S. and Canada, we will be able adequately to fulfill our responsibilities in the international securities

markets. In this new international era, we must continue our efforts to assure that our markets are as stable, fair, and efficient as possible.