

# NEWS

## SECURITIES AND EXCHANGE COMMISSION

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FOR ADVANCE USE AT 7 P.M., EST, FRIDAY, FEBRUARY 23, 1973

KEYNOTE

FOR

"THE SEC SPEAKS AGAIN"

An Address by

G. Bradford Cook, Chairman-Designate

Securities and Exchange Commission

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ADDRESS BY G. BRADFORD COOK  
CHAIRMAN-DESIGNATE, SECURITIES AND EXCHANGE COMMISSION  
TO "THE SEC SPEAKS AGAIN"  
THE PRACTICING LAW INSTITUTE  
WASHINGTON, D. C.  
FRIDAY, FEBRUARY 23, 1973

As the Chairman-Designate of an agency of disclosure and as a former practicing attorney in Chicago, it gives me great pleasure to appear as the keynote speaker at this second annual program--"The SEC Speaks Again." Next year I suppose you can call this "Son of SEC Speaks." At any rate, I think your numbers and your representation effectively disprove a notion that I used to hear quite often and which I found very distressing. That was the notion that SEC work was the province of a few large Wall Street law firms and some well-placed SEC alumni in Washington. If that ever was true, it is certainly no longer the case. Knowledge of the activities of the Commission and its policies today is widely disseminated. Courses in securities regulation, once confined to a small number of law schools, now are widespread throughout the legal training structure.

I believe that appearances of Commission personnel before the Bar and other interested people at conferences such as these are vital. You discover that we aren't all bureaucrats out to make your lives more complicated. But, of course, to the extent we do make it more complicated for your clients, we make it financially more rewarding for you. And we learn from your questions. Last year, members of the Commission staff spent 750 man days--that's the equivalent of about three people, full-time, for a year--attending conferences all over the country. That figure does not include the time spent by my predecessor, Bill Casey, who gave almost 60 speeches in his 20 months as SEC Chairman. We will continue to try to participate in these conferences because they are helpful both to the participants and to the Commission, but it must be understood that we may have to become more selective as time goes on because of the growing demands on the resources of the staff.

In addition to conferences, we have embarked upon a series of Commission-sponsored regional seminars. These two-day affairs involve one day of discussion between key SEC staff members from Washington and our regional offices on the one hand, and local enforcement officials and

securities commissioners on the other, followed by a second day of meetings in which the same SEC officials acquaint members of the local bar with current developments involving the Commission. Last year we had very successful meetings in Los Angeles, Chicago and Dallas, and I understand the next one coming up will be in Houston. We hope to continue this program to further contacts with lawyers outside of the East Coast.

I should warn you that these conferences with lawyers are not just informational in nature. We have our eyes open for outstanding legal talent. The Commission now is developing an SEC Attorney Fellow Program which will bring experienced attorneys from corporate and securities law to the Commission for a specified period. The Commission will benefit from the infusion of new ideas and new legal approaches. The participating attorneys will find themselves involved in the substantive legal problems confronting us--and there are plenty of these to go around. We will announce details of this program in the near future.

This two-day program is particularly timely, touching as it does virtually all major subjects of current concern at the Commission. As the first speaker, I would like to put the detailed presentations which will follow in a broad context and I would like to give you an overall

sense of our direction as I see it. The overriding fact is that in 1973 we are on the threshold of a period of highly visible change--change not only in the operations of the securities markets and the investment community, but change in the disclosure process for corporations whose securities are publicly traded. These will be years of implementation of broad, far-reaching policies. The results in some cases will be apparent for decades to come.

I believe the most fundamental and obvious changes will take place in the securities markets. Many of you are familiar with the restructuring of the securities markets already underway. There is a broad consensus that what we need is a central market system--really a communications system of national scope--which will bring together the capital resources and the know-how of the market-makers in listed securities and put them to work for the investor in a highly visible and effective way.

The essence of this central market system is competition. The competition between market-makers from New York to California, both on the floors and off the floors of the exchanges, will be seen "live" in the quotation display systems in thousands of offices of broker/dealers. The

pooling of these bids and offers in the securities traded through the system and the surrounding regulatory structure will seek to assure the investor--big or small--of getting the best available price at any given point in time. As a member of the Commission staff involved most directly in this crucial project over the last several months, I can assure you that the implementation of the central market concept--with all of its implications for the investment process, the capital-raising mechanism and the economy--will receive the highest priority. In my judgment, all of the major elements of this system, including a consolidated last-sale and volume reporting network, a quotation display system and an effective regulatory structure, can and should be in operation no later than two years from now.

The securities industry itself is entering an era of more dramatic and fundamental change. The new economics of the securities business, the changing capital structure of the industry, the enlarged role of institutions, the shifting trading patterns in the markets, the regulatory impact of the industry's recent operational and financial crisis--all should bring their greatest weight to bear in the next few years. In our regulatory role, we at the

Commission will work to complete the job of insuring financial responsibility of broker/dealers. We will pursue, legislatively and in the regulatory sphere, the task of creating a nationwide system for securities processing and ownership transfer. We will examine the whole question of fixed brokerage commissions. And we will move to bring about a resolution of the commission question in a way that reflects the economic realities of the business and at the same time provides firms with the flexibility to compete for business across the broad spectrum of the investment population. We will encourage the development of new services in investment management and research so that a wider range professional investment services can be available to more investors.

In my judgment, the next few years will produce very fundamental changes in the disclosure process. These will directly affect many of you as attorneys. The disclosure process must make more sense--to the investor, to the issuer, and to you as the professional practitioner. Disclosure documents are not primarily intended to be selling documents. Nor should they be viewed solely as liability documents, although they carry great responsibility. They are filings of information. We treat them

as such and we want you as practicing attorneys, so involved in the preparation and the language of these filings, to do the same. We intend to eliminate on as wide a scale as we can the 'boiler plate' and other meaningless language in disclosure documents. Last July, as many of you know, we cited in particular in our releases that came out of the 'hot issue' hearings the acute problems of non-disclosure language in the competition and litigation sections of the prospectus. There are other numerous examples of non-disclosure masquerading as disclosure. We intend to deal with them.

The Commission's policy of publishing objective rules and guidelines will continue. I think that the releases of selective interpretation on Rule 144, which came out last Fall, are very helpful. They also save the Commission a lot of individual staff time answering questions and free up resources for new projects. But our policy of making these rules more simple requires your cooperation. Bill Casey gave a number of speeches about how the 140 Series of rules was an attempt to free the securities laws of much of the incantation and theology that had grown up around them, so that people could



understand clearly where they stood in the area of restricted stock, private offerings, and so on.

Unfortunately, we have seen a reaction to Rule 144 which indicates that a new theology is growing up.

I don't wish to imply that all of the paperwork that has grown up around 144 is unnecessary, nor that attorneys should be careless about Rule 144 transactions. On the other hand, it was never intended that the paper-passing process would increase as a result of our new "objective" rule.

We hope that with our proposed Rules 146 and 147 we can improve on the 144 experience. But we need your help.

The Commission's concern with bringing greater clarity to the disclosure process extends to the crucial area of inside information. In my judgment, we should approach this subject from two fronts. Our first will be to provide the corporations, the investment community and others concerned, such as yourselves, with a frame of reference to which you can turn for guidance. The Commission will be preparing over the next several months a detailed treatment which will include the legislative history and intent of the law in this area, provide an analysis of what has taken place in the courts, present

the Commission view of the law, and set out a series of guidelines for corporate management, investors, financial analysts, brokerage firms, the legal profession and others.

In my view, a regulatory approach is badly needed and is far preferable to allowing matters in this area to proceed fortuitously on a case-by-case basis in the courts. Some of you may say it is too late, but I assure you it is not. Contrary to what some legal wags contend, not all securities action or inaction violates 10b-5. At the same time--and this is our second and simultaneous approach--the Commission intends to pursue on a priority basis its enforcement activities on misuse of non-public information. We will meet the growing problem whereby this information tends to become 'coin of the realm' in too many communications between issuers and the investment community. By clarifying the responsibilities of those concerned and by expressing meaningfully the views of the Commission, we are moving to prevent misuse of inside information. Where misuse of this information is prevalent, a continued and vigorous program of enforcement will help end these practices. In this connection, I think the Commission will be looking in the future toward criminal references to the Department of Justice in some of these cases.

The Commission's efforts to bring greater sense and purpose to disclosure should produce significant changes this year in our system of reports and filings. As some of you are aware, the work of three industry advisory groups appointed by Chairman Casey to review reporting procedures and forms has been completed. A number of you were members of these groups. Their recommendations were specific and detailed. Our response has been to appoint a task force of Commission staff which will review these recommendations and present a series of proposed changes to the Commission by June 30. Our goal is to eliminate deadwood reporting, to consolidate and simplify, to weed out duplication and needless statistics and increasingly to work the computer into the regulatory process.

As an agency of disclosure we are concerned about how quickly filings are processed and how widely the information is distributed. We have a new office, the Office of Registrations and Reports, which is acting as a clearing house, central receiving point and distribution center for disclosure documents.

We have overhauled our publications to bring notice of these filings to the public on a more timely basis and we have added two new publications in the process--

the SEC Docket, which compiles SEC releases weekly in bound form, and a weekly Statistical Bulletin, which pulls together virtually all of the SEC statistical series formerly published in several documents. With the new system, we will be able to distribute our material much more quickly. In the past, proposed rules have been received by interested parties after expiration of the comment period. Whether or not the staff purposely perpetrated this as a "catch 22" procedure will be an irrelevant consideration with the new SEC Docket.

Our push for greater clarity is not limited to disclosure. For example, we want broker/dealers to be fully informed on the standards expected by the Commission in the operation of their businesses. Last October, the Commission began a cooperative effort with the industry to develop a model compliance program. We are not thinking so much of changes in SEC rules as we are of an educational project on existing requirements and day-to-day practices in the brokerage industry. An industry advisory group will submit its recommendations on the program in the near future. We think what is developed will be of particular help to smaller broker/dealers looking for compliance guidelines.

Obviously, the Commission has much to accomplish. Its resources are limited. That was one reason for its reorganization last August, the first in 30 years, which focuses enforcement and investigative activity in one area, disclosure in another, and regulation in a third. Management of resources and setting of priorities will be one of my chief concerns as we move in the major areas I've outlined.

Much of what I have been talking about tonight involves what the Commission intends to do to assist the corporation and the practitioner through greater clarity in disclosure regulations. I can say that we will be looking to the issuers and to you in the legal profession for a great deal more. As I've mentioned, the guidelines and rules the Commission issued last year on prospectuses as a result of the hot issue hearings represent the first phase of what will be a continuous effort to make disclosure documents speak meaningfully to investors. We plan to move forward in closing the gap in the quality of information companies prepare for stockholders and the information they file with the Commission. We will be defining with rules and guidelines our policies on earnings projections--policies whose main

impact will be that if a corporation chooses to make its views on future economic performance available to any outsiders, they must then be available at the same time to the investing public.

In my opinion, corporations should be taking the lead in making disclosure more meaningful. The 10,000 companies who file reports regularly with the Commission today find themselves confronted with growing challenges in the fields of social and environmental responsibility and intensified competition at home and abroad. Within this context, there is an obvious need for these companies to communicate clearly and meaningfully with investors. The disclosure process represents an extraordinary and almost constant opportunity to do this. But it is an opportunity too often missed. Too many companies view disclosure as a ritual, as a periodic legal hurdle, as a chore, rather than as a chance to communicate not only with stockholders and security analysts, but with employees, suppliers, even customers.

For companies who don't take their relations with stockholders very seriously, I would suggest a selfish thought. Let them imagine themselves fighting a tender offer of another company anxious to gain control. Forgetting the merits of the situation, whatever they might be,

these companies should ask themselves if they would communicate with their stockholders with a sense of confidence and credibility.

It was my intention tonight to touch on our policy concerns at the Commission only in the broadest way. I know you are anxious to hear the staff members and others on the program move ahead with their more detailed presentations. Let me say, however, that in my view these directions I have outlined hold great potential benefit to the securities markets, the securities industry and the corporate issuer. The main reason is that they bring greater sense and clarity to what we are doing. It makes sense, for example, to have a market system that is open, highly visible, based on competition and free of convoluted procedures. It makes sense to have a securities industry that is solidly financed, efficient in its procedures, thoroughly professional in its outlook and equipped with an economic incentive to compete for business among the broad spectrum of investors. It makes sense to have a disclosure process that is really informative and which is utilized as a channel of communication between the corporate issuers and their millions of investors. And what makes sense will work and will benefit all concerned. Thank you.