Remarks Of

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"Speculation"

Securities Industry Association
First Annual Government Relations Conference
Washington, D.C.
March 16, 1993

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*/ The views expressed herein are those of Commissioner Roberts and do not necessarily represent those of the Commission, other Commissioners or the staff.

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"Speculation"

I. Introduction

I appreciate the opportunity to participate in the first Securities Industry Association's ("SIA") Annual Government Relations Conference. I view such a conference as timely since the face of government is now changing, although apparently in incremental stages. I know that the SIA has been justifiably proud of its government relations in the past, and I expect that reputation to be maintained in the future. While I do not always agree with the SIA's views, I am nonetheless interested in those views. I believe that communication with the industry enables me to do a better job as a regulator, and I expect that everyone agrees with the proposition that I need all the help that I can get. I certainly wish to encourage such continued communication.

The theme of this conference is "Perspectives on Change." I will point out that, to date, very little has occurred in the way of change at the Securities and Exchange Commission (the "Commission"), and the uncertainty is somewhat unsettling. I suppose that eventually there will be some changes at the Commission, but I do not know when changes will occur or what changes will be made. More importantly, I do not know who will be the agent for change. I believe it is fair to say that the longer it takes for "change" to arrive at the Commission, the more morale will suffer. I understand that this is a natural occurrence at any regulatory agency after a presidential change. While the Commission as presently constituted can continue to be effective and can continue to work on unfinished projects,

direction from the new administration would provide additional authenticity to the Commission's actions. The prolonged absence of such direction would not be a welcome occurrence, at least not with me.

With that backdrop in mind, it is difficult to be particularly forward looking concerning the Commission, although I will do my best. I intend to briefly describe several initiatives today that the Commission may pursue. Obviously sound predictions in this area are elusive, and, at a minimum, one should remember the source when considering any speculative prognostications. However, first, before the speculation, I wish to reflect briefly on the past and how the past may influence the future.

II. Industry Overview

Last year the nation's securities firms had pretax profit of over $6 billion, topping even 1991's record earnings. Apparently heavy trading by individual investors and a record surge in new stock and bond issues underwritten by securities firms triggered 1992's record year. Thus far in 1993, mutual funds that invest in municipal bonds and in common stocks are taking in cash at the fastest pace in history. Last week the stock market reached a new high. The corporate bond market and the municipal bond market continue to be flooded with new issues and refinancings as borrowers scramble to take advantage of low interest rates. Certainly the securities industry is much more robust today than it was in 1990 when I joined the Commission. Although I hope

that these good times continue indefinitely for the securities industry, I caution the industry to take advantage of the good times and to save for a rainy day or two in the event that the good times grind to a halt. However, I do congratulate the industry for the success earned in 1991 and in 1992 and for the strong beginning in 1993.

III. Bank Tying

Although the banking economic climate has improved also, the good times currently being enjoyed by the securities industry has been eyed somewhat jealously by the banking industry, in particular by the stronger banks. Bank entry in the securities business is welcome as far as I am concerned so long as the potential conflicts of interest presented by full bank entry into the securities industry are addressed appropriately. Obviously one such conflict which appears from time to time is the allegation fielded by me and others from various sources, at least during 1992, that some banks were tying the use of their credit enhancement services to the use of other bank services, such as underwriting, in a securities transaction.

Section 106 of the Bank Holding Company Act prohibits a federally-insured bank from requiring a customer to purchase any other product or service from the bank or its affiliates, or to refrain from purchasing products or services from a competitor, as a condition of obtaining credit or any other service from the bank. Both the federal bank regulatory agencies and the Department of Justice are responsible for the enforcement of this

provision. For whatever reason, enforcement actions in this area have rarely been brought. There are indications, though, that this historical enforcement inaction may be changing. I hope that is the case.

Although I am unable to quantify the level of abusive activity that is taking place, I am reasonably convinced that some bank tying violations are occurring. However, I do believe that the majority of banks are not violating the tying prohibitions. It appears to me then that it would be in the best interest of the banking industry to press for more aggressive enforcement action in this area, when the facts so warrant, in order to ensure that the majority of banks are not tainted by the activities of a minority.

In the past, I have challenged the banking industry to bring possible tying violations to the attention of the bank regulators for enforcement consideration. While initially my challenge was more hotly opposed than warmly accepted, lately the banking groups which I have addressed on this subject are more amenable to self-policing. I further understand that many banks have been reviewing their activities and their compliance procedures to ensure that tying violations are not occurring and are not likely to occur. I view this as a positive trend. Certainly industry self-policing appears to me to be far preferable to the other alternatives which have been advocated in the past to prevent bank tying violations.

I should point out for balance purposes that the conflict of interest concerns and anti-competitive problems posed by bank tying are also posed to a lesser extent by tying activity committed by a traditional securities firm. Of course some important distinctions do exist between bank securities affiliates and traditional securities firms with respect to the tying abuse problem. The major distinctions are that traditional securities firms are not as active in making loans as are banks and, more importantly, are not the beneficiary of federal deposit insurance. It has been brought to my attention, though, that tying activity is apparently also present in the non-bank securities industry. Thus, the self-policing notion to prevent tying violations should apply to the securities industry as well as to the banking industry, and I wish to make that point today.

IV. Legislation

Any discussion of bank entry in the securities industry should include the topic of Glass-Steagall reform. At this juncture, there does not appear to be any legislative movement in that direction. I anticipate that the reform occurring in the near future will be the current reform gradually evolving at the regulatory level.

There does appear to be some interest in Congress for an interstate banking bill, and I suppose that such legislation could be used as a vehicle to achieve full blown Glass-Steagall reform. If so, I suspect that the legislation would also attract a number of amendments containing firewall provisions. Such

maneuvers historically have resulted in gridlock. I expect that legislative gridlock will continue to prevail in this area with respect to any broad banking reform legislation.

The banking industry has developed a keen interest in the mutual fund industry. For example, I understand that bank-managed investment companies already contain almost 15% of the investment company industry's total assets. Given the tremendous growth that has occurred in the bank proprietary mutual fund area, there may exist some congressional interest in legislation that would permit national banks, state member banks, and bank holding companies to engage in the business of dealing in, underwriting, and distributing the shares of investment companies, and to organize, sponsor, manage, or control investment companies by conducting those activities through nonbank subsidiaries or affiliates.

While I support the concept of this legislation and welcome full bank entry into the mutual fund business, I believe that certain additional amendments to the Investment Company Act and the Investment Advisers Act are necessary to address certain potential conflicts of interest that would arise if such a bill were to be enacted. I will not discuss those suggested amendments today, only to mention that they do exist. In any event, I anticipate that bank involvement in the mutual fund area will continue to increase. While such a statement would confuse Willie Sutton, I predict that banks will continue to go where the money is going; and the money is now flowing into mutual funds.

Otherwise, on the securities legislative front, with one exception, I anticipate pursuit of the same legislative reforms sought in the last Congress, government securities reform and investment adviser reform. The exception is that legislation in the tax area, which will involve the securities industry, appears to be forthcoming. I expect that this tax legislation will receive substantial attention from the SIA.

There were a number of legislative recommendations contained in the Investment Company Act Study which to date have not received much attention. That is too bad. One that I am very much in favor of is the recommendation for legislation eliminating most of the exemptions from the federal securities laws for interests in bank collective trust funds and insurance company separate accounts in which self-directed defined contribution plans invest. I believe that such legislation is necessary to ensure full and fair disclosure to every pension plan participant responsible for investing his or her own retirement funds. This decision may be the most important investment decision that these individuals will make. If poor, uninformed decisions are the result, Uncle Sam may be forced to pick up a larger tab through one or more entitlement programs later. Hopefully, at least this legislative recommendation of the Study will receive more attention in the future.

V. Enforcement

I am often asked what will be the Commission's enforcement priorities in the future. Of course enforcement actions are

often driven by external, unforeseen events, such as was the case with the line of government securities enforcement cases conducted last year. It is difficult to predict the next scandal lurking around the corner.

I do anticipate that the Commission will continue to focus on failure to supervise actions. The Salomon Brothers Section 21(a) Report issued last year by the Commission should have delivered that message. It also should be clear that the systemic abuse of retail investors, as has been demonstrated by the securities industry in the past, will not be tolerated by the Commission and will result in a failure to supervise enforcement action.

In addition to the usual array of insider trading cases and cases involving misappropriation of client funds, I expect that the Commission will continue to expend enforcement resources ferreting out financial accounting fraud cases, like the MiniScribe action, and, to a lesser extent, on serious accounting violations not involving fraudulent conduct, such as those recently pursued by the Commission in the financial institution and investment company area. I also expect that the Commission will continue to bring scattered enforcement cases involving management, discussion, and analysis disclosures when the facts so warrant. Further, under the appropriate facts and circumstances, I anticipate that the Commission will continue to pursue a handful of enforcement cases in the municipal bond area and in the corporate bond area.

In its enforcement program, the Commission has attempted to be tough and aggressive on the one hand and fair and reasonable on the other. That is a difficult balance to maintain and often results in actions that are thorough and effective but rather slow. I assure the SIA that above all, the Commission strives to "do the right thing" in its enforcement program.

VI. Potential Rulemaking Actions

There are a number of rulemaking initiatives that could receive Commission attention in the reasonably foreseeable future. I will mention several potential areas that appeal to me.

Regardless of the prospects for "change," I believe that the Commission will continue to plug along with the Market 2000 study underway although the schedule may slip a little. Among other issues, I look for recommendations on how to handle payment for order flow and soft dollars, how to handle off-exchange trading systems from a regulatory perspective, and how to stem the migration overseas of domestic stock trades for execution. I also believe that the Commission will continue to implement the rulemaking recommendations deriving from the Investment Company Act Study. Further, the Commission may begin to consider the recommendations contained in the recently issued Report of the Task Force on Administrative Proceedings.

I anticipate that the Commission will continue to study Exchange Act Rules 10b-6, 10b-7, and 10b-8 with a view toward simplification and will continue to work on a large trader

reporting system. I also expect additional consideration to be given toward improving the efficiency of our small company capital formation system. I would submit that for this latter exercise to be significant, whatever rulemaking approach is adopted must be coordinated with the states. Otherwise, as past experience has demonstrated, significant improvement will be difficult to accomplish. Along similar lines, it appears to me that it would behoove the securities industry to encourage the Commission and the states to streamline and to make uniform, as much as possible, all the securities registration and filing requirements. The Commission already pursues such an objective to some extent but could intensify its efforts.

I expect the Commission to propose amendments to Rule 2a-7 for tax-exempt money market funds generally paralleling the amendments adopted now applicable to taxable money market funds. I also expect the Commission to continue to review wrap fee programs and to continue to monitor arbitration proceedings. Further, I expect the Commission to continue to be attentive to developments in the derivatives area and, at a minimum, to propose amendments to the net capital rule with a view to achieving sensible and appropriate capital treatment for derivatives. The risk assessment information now being collected by the Commission may be helpful in this area once analyzed.

It is anticipated that the Commission will be attentive to the actions taken by the Municipal Securities Rulemaking Board as a result of its customer protection study. I also anticipate

that the Commission will continue to monitor the Financial Accounting Standards Board's projects on fair value accounting and on stock option valuation. Moreover, I anticipate that the Commission may look closely into certain bondholder issues as a result of the Marriott uprising and, in particular, may consider amending Exchange Act Rule 14e-1 to address certain practices that may be manipulative and deceptive in the context of simultaneous tender offers for debt securities and consent solicitations which strip from the indenture various protections for bondholders.

The Commission has been active in the past on the international securities front, and I expect that activity to continue. I believe that everyone is pleased with the results thus far in this area engendered by Rule 144A. However, everything that I have read indicates that there is considerable interest in permitting world-class companies from other countries to list their securities on our exchanges and to sell their securities to interested investors. While there are some tough issues to tackle in this area, I fail to understand why such a project cannot be explored. Certainly the issues must be handled carefully, but such a project should at least be considered in my view. It does not make sense for the business already conducted in this area to be directed overseas.

Finally, in an area that has always sparked considerable controversy, the recent rulings from the Commission and the staff in the shareholder proposal area have apparently now produced new

confusion. While clarity would be nice, it may be difficult to achieve. The judgments in this area become very difficult and expose the Commission to substantial criticism. Nevertheless, the Commission may attempt clarity either through an interpretive release or a rulemaking project, or may attempt to withdraw from serving as a referee altogether with respect to these issues and to leave them for issuers, shareholders, states, and courts to decide. While the former approach is more responsible, the latter approach is easier and sidesteps the criticism so common in this area.

VII. Conclusion

I suspect that I have overlooked a number of initiatives that the Commission will undertake in 1993. While it is entertaining to engage in a guessing game, actual events are all too often as expected as portions of "The Crying Game." For almost 60 years, the Commission has attempted to protect investors without unnecessarily impeding the natural progression of market forces. The result to date has been a vibrant, active securities market, second to none. I intend to work with my colleagues on the Commission and with the SIA, among others, to perpetuate that result. While there may be differences in the approach taken from time to time, I know that everyone is committed to such a goal. I look forward to working with each of you in the future toward that objective.