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News Release

Luncheon Address of

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SEC-NASAA Cooperation: The Next Generation

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

SEC-NASAA Cooperation: The Next Generation

I. Introduction

It is a great pleasure to be with members of the North American Securities Administrators Association today and to have the opportunity of addressing a group consisting of both state and federal securities regulators. We are indeed a "group." All of us share the common goal of investor protection, and by working actively together we can increase our regulatory success.

In Section 19(c) of the Securities Act, 1/ the source of these gatherings, Congress told us that through collaboration and cooperation we regulators should work toward:

(1) maximum effectiveness of regulation;

(2) maximum uniformity of regulatory standards;

(3) minimal interference with the business of capital formation; and

(4) substantial reductions in the costs and paperwork imposed by governments upon the capital raising process.

In past years, NASAA and the Commission have cooperated well in achieving the legislative goals of effective and uniform regulation, while at the same time avoiding undue interference with the business of capital formation. My remarks today are subtitled with the popular contemporary phrase -- the "next generation" -- because I believe that much can still be done. The agenda for the "next generation" is formulated at these annual meetings, as well as at more informal meetings throughout each year.

1/ 15 U. S. C. §77s(c).

II. Past Progress

In a sense any next generation agenda will depend upon past progress. Progress in state and federal regulatory cooperation in the securities area has been guided by two events: the drafting of the Uniform Securities Act 2/ by Professor Louis Loss; and the enactment in 1980 of Section 19(c). The Uniform Act has been widely accepted and has provided a good measure of uniformity. Nevertheless, each state has interpreted and administered its own securities statute in its own way. We have seen the development not only of differing state statutory standards, but also of differing regulatory applications, accompanied by a plethora of different forms and filing requirements.

Prior to 1980, coordination between the state and federal systems also was lacking. It seems fair to say that, prior to that date, the laws, rules, and regulations governing securities matters were marked by inconsistency in approach, application, and interpretation among states and between the Commission and the states. Then, as you all know, the Small Business Investment Incentive Act of 1980 3/ introduced Section 19(c) into the Securities Act of 1933, and redirected our thinking with respect to federal versus state and state versus state regulation of securities matters. The legislative

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2/ 1 CCH Blue Sky Law Rep. ¶¶ 5501-5573. See also L. Loss & E. Cowett, Blue Sky Law (1958); L. Loss, Commentary on the Uniform Securities Act (1976).

3/ Pub. L. No. 96-477, 94 Stat. 2275 (1980).

drafters established a new way to deal with the issue of uniformity. They believed it important to bring personnel from all of the securities regulators together on a regular basis to try to make regulation more effective and less burdensome for investors, small business, and the public. Through cooperation it was thought that forms and processing procedures at federal and state levels might be standardized, nonessential duplication eliminated, and uniform exemptive provisions developed.

Cooperation is the key to the legislative mandate -- and this conference brings us together for the fifth time to continue our progress toward uniformity and effectiveness of regulation.

Our progress in the past few years has been both real and significant. In the investment advisory area, we have reduced duplicate registration of investment advisers through the uniform Form ADV 4/ for both federal and state purposes. Inspections of investment advisers have been improved through training and assistance to the states provided by the Commission's staff.

In the broker-dealer area, the Central Registration Depository (CRD) 5/ has been a major improvement in the way agents are registered at the state level. In addition,

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4/ 17 CFR §279.1.

5/ The CRD is a computerized system that was developed by NASAA and the National Association of Securities Dealers (NASD) and is used to register securities industry personnel with the NASD and the states.

changes to the Commission's Form BD 6/ used to register broker-dealers at the federal level have been made in response to the needs of the states.

In the disclosure area, an early and important accomplishment involved coordination of exemptive provisions for securities offerings -- the Commission's Regulation D 7/ and your Uniform Limited Offering Exemption (ULOE) statement of policy 8/. Our joint system for coordinating interpretations of ULOE and Regulation D is widely regarded as an excellent joint NASAA-SEC accomplishment.

With a strong record of cooperation as a background, we can begin the pursuit of our "next generation" goals now.

III. Investment Management

To begin, there are a number of improvements in the area of investment management that are within our grasp. First, building on the fact that a number of states already use uniform forms for certain types of investment companies, 9/ we can make uniform the disclosure standards for investment companies at both the state and the federal levels. Second, the Commission should be able to provide an exemption from

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6/ 17 CFR §249.501.

7/ 17 CFR §§230.501-506.

8/ CCH NASAA Rep. ¶6201 at 6101.

9/ With respect to open-end management investment companies and unit investment trusts, the currently existing uniform application forms, Forms U-1 and U-2, are widely used at the state level. 1 CCH Blue Sky Law Rep. ¶¶5115, 5116.

adviser registration at the federal level for any small investment adviser registered with the state where it does business. Third, application of a system similar to the broker-dealer Central Registration Depository to investment advisers is an important goal.

IV. Market Regulation

In the area of market regulation, the CRD broker-dealer registration system may offer opportunities for Commission utilization. If all broker-dealers and their representatives can be registered through a single system, a major step toward federal-state uniformity will have occurred. Another area of major interest is the continuing progress being made in broadening state registration exemptions for listed securities to cover securities designated as National Market System securities.

V. Corporation Finance

In the area of corporation finance, much remains to be done in furtherance of the Regulation D - ULOE partnership. We hope that your board will approve additions to the ULOE policy statement paralleling our recent amendments to Regulation D which broaden the definition of accredited investor to include many previously excluded institutional investors. 10/ By the same token, we hope that both the board and all members of NASAA will carefully consider the

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10/ Release No. 33-6758 (March 3, 1988) [53 FR 7866].

Commission's proposed revisions to Regulation D that were recently published for comment. 11/ In one of those proposals, the Commission has suggested that not all failures of compliance should destroy an otherwise valid claim to a Regulation D exemption. The proposed rule would provide an "innocent and immaterial" defense if deviations from the conditions of Regulation D are minor and isolated. The comment period for these proposals expires on May 13th. We look forward to considering the views of NASAA and of the states on this proposal.

The Regulation D - ULOE project already promises much in the way of uniformity. Thirty-six states now have ULOE, a variant of ULOE, or exemptions very similar to ULOE. 12/ I hope that within the near future each of the states represented here will have the ULOE statement in its entirety as an exemptive provision. Adoption of ULOE should continue as a number one priority of both the Commission and NASAA. You will recall that the text of Section 19(c)

11/ Release No. 33-6759 (March 3, 1988) [53 FR 7870].

12/ According to a recent analysis, the following states do not have ULOE or a coordinating variant: Arkansas, California, Colorado, Florida, Illinois, Indiana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wyoming. See Fein, Makens and Cahalan, "Review of Developments in State Securities Regulation: Part II ULOE: Comprehending the Confusion," 43 Business Lawyer 737 (1988).

specifically envisions a uniform exemptive provision. 13/ A recent study, reported in the February issue of the Business Lawyer, 14/ details both the uniformity and the lack thereof remaining in this area, and should provide sufficient impetus for renewed efforts toward completing the ULOE project.

The Uniform Limited Offering Registration or ULOR procedure currently being formulated by committees of the American Bar Association with the assistance of several NASAA committees should also be considered by your board. 15/ A uniform system of registration for small offerings among the states, in conjunction with the Commission's Rule 504 exemption, 16/ will permit greater access to capital by small issuers with less regulatory costs and yet promote a high level of investor protection.

VI. Enforcement

Another vital area of investor protection on both the state and federal level is a strong enforcement effort. State efforts are particularly effective against intrastate violators. Your offices often receive early indications of fraudulent

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13/ 15 U. S. C. §77s(c)(3)(C).

14/ Fein, Makens and Cahalan, supra n. 12.

15/ See Harris, Keller, Stakias and Liles, "Financing the 'American Dream' -- Small Business and the ULOR Project," 43 Business Lawyer 757 (1988).

16/ 17 CFR §230.504.

activities and your cease and desist powers enable you to respond quickly. Although the Commission focuses its efforts on multi-state, nationwide, and international schemes, there clearly is a substantial area of overlap that requires close cooperation. There can be no substitute for a dynamic working relationship between the Commission's regional offices and neighboring state securities officials. I hope that these two days will serve to enhance those relationships in a meaningful way. New personalities and changing faces among state and federal securities administrators make active and continuing communication and coordination important. To this end, we have recently taken additional steps to improve communications, including simplified internal procedures designed to respond more quickly to your access requests.

VII. Internationalization of the Securities Markets

Uniformity in dealing with the internationalization of the securities markets is also important for all securities regulators -- federal, state, and foreign. The interplay among the markets around the world became dramatically evident during the market declines of last fall. The Commission has a mandate to oversee the operation of our national securities markets and it has historically been active in its oversight of the operational and financial integrity of these domestic markets. International markets offer challenges to our leadership, challenges which we are meeting by working with foreign regulators to develop trading, clearance, and settlement

linkages, international trade and quote mechanisms, and adequate financial oversight systems. 17/

An important piece of the international puzzle most assuredly is the application and extent of disclosure principles in multinational offerings. In 1985 the Commission issued a release seeking comments on ways to facilitate multinational offerings of securities and to coordinate international disclosures and distributions. 18/ Two approaches have been suggested. Under the "common prospectus" approach, participating jurisdictions would set common disclosure standards and

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17/ Specifically, I have been recommending that the following regulatory principles be considered by market regulators throughout the world:

(1) Sound standards for disclosure, including mutually agreeable auditing and accounting standards;

(2) Promotion of market fairness, including prohibitions against insider trading, market manipulation, and misrepresentations to the market place;

(3) The widespread availability of quotation and price information;

(4) Efficient and compatible national and international clearance and settlement systems;

(5) Broker/dealer registration qualifications and conduct requirements designed to promote integrity and honesty in the profession;

(6) Improvement of capital adequacy standards in order to provide greater stability and liquidity for national and international markets; and

(7) Establishment of international surveillance and enforcement agreements.

18/ Release No. 33-6568 (February 28, 1985) [50 FR 9281].

accept a single document in satisfaction of such requirements. Under the "reciprocal" approach, the document utilized in the issuer's home country would be acceptable in participating jurisdictions. Of the two approaches the most promising appears to be the "reciprocal" approach. As an important first step, the Commission is working on a proposal that would permit use of a modified reciprocal approach with a small number of other countries for the registration of certain "world class" issuer debt securities. Investment grade debt is being targeted since such issues trade in large part based upon yields and ratings. Consideration is also being given to extending the reciprocal approach to limited rights offerings and exchange offers. An important concern with the reciprocal approach is the acceptability of differing international accounting and auditing standards. The Commission is actively involved in initiatives to reduce the differences in these systems internationally.

International progress will also be improved by coordination of state securities procedures. A uniform federal/state registration form for multinational offerings would be extremely helpful in facilitating foreign offerings and would go a long way toward convincing foreign regulators of the importance of a strong commitment to the principle of uniform disclosure standards.

VIII. EDGAR

A final item of importance to state and federal securities regulators is the EDGAR system. As you know, EDGAR is the

Commission's automated system for "electronic data gathering, analysis, and retrieval." The utility and feasibility of the system has been amply demonstrated by the pilot project. The EDGAR pilot has successfully logged over 30,000 electronic filings. Over 1,200 companies now submit some or all of their filings to the Commission electronically. When fully operational, EDGAR will provide tremendous benefits to issuers, investors, and regulators as well. NASAA and the Commission have been working cooperatively to achieve an electronic filing system that can be beneficial on both the federal and state level. I believe that a much closer working relationship between the Commission and NASAA regarding EDGAR has been developed in the past few months, and I look forward to continued cooperation regarding the project.

IX. Conclusion

The "next generation" issues that I have described offer ample challenges for cooperative effort. On behalf of the Commission, I offer continued dedication to the cooperative goals set forth in Section 19(c) of the Securities Act. Uniform securities regulation continues to be important to the Commission, and we look forward to vigorous joint efforts with NASAA directed to achieving that goal.