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SOME NEW APPROACHES TO CORPORATE DISCLOSURE POLICY

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* THIS IS THE FINAL DRAFT OF COMMISSIONER KARMEL'S REMARKS. ALTHOUGH THIS DRAFT MAY BE QUOTED, IN DELIVERING HER ADDRESS THE COMMISSIONER MIGHT HAVE MADE MINOR REVISIONS IN THE TEXT. THESE ALTERATIONS, IF ANY, WILL BE REFLECTED IN THE PRINTED VERSION OF THE SPEECH WHICH WILL BE AVAILABLE FROM THE COMMISSION'S PUBLICATION UNIT IN THE NEAR FUTURE.

As a Commissioner of the SEC I am called upon to give speeches quite frequently. I accept these invitations because I believe it is important for regulators to express and explain their views. It is part of the process of accountability which public institutions need to maintain their legitimacy.

Much of my struggle as a relatively new voice in Washington has been to make others believe that my ideas are relevant and important. I was therefore honored to be invited to speak at this Forum, which is the former intellectual home of the SEC's Chairman and a place where ideas about business and government and their interrelation do matter and are thought to make a difference.

The ideas I want to share with you this morning concern regulatory reform and corporate disclosure policy. Deregulation is a clarion call in Washington today, but it often seems to be a slogan rather than a program which is both meaningful and responsible.

A recent study on federal regulation by the Senate Committee on Governmental Affairs reached the conclusion that --

> ... MUCH OF FEDERAL REGULATION IS JUSTIFIED. HOWEVER, PARTICULARLY IN THE ECONOMIC AREA, CERTAIN CHANGES ARE WARRANTED. THE NEED FOR SUCH MODIFICATIONS IS SUGGESTED BY VARIOUS CAUSES, INCLUDING CHANGES IN THE ECONOMY, LESSONS LEARNED UNDER A SPECIFIC REGULATORY APPROACH, OR BY A LACK OF JUSTIFICATION IN THE FIRST INSTANCE FOR A SPECIFIC REGULATION. 1/

ALTHOUGH MOST AMERICANS BELIEVE IN ECONOMIC FREEDOM, MOST AMERICANS ALSO BELIEVE THAT A CERTAIN AMOUNT OF GOVERNMENT REGULATION IS REQUIRED FOR THE GENERAL WELFARE. REAL WORLD ECONOMIC SYSTEMS CONTAIN MANY INSTANCES WHERE THE FREE MARKET DOES NOT PRODUCE RESULTS WHICH ARE CONSIDERED ECONOMICALLY OR SOCIALLY DESIRABLE. A COMMON RESPONSE TO SUCH MARKET FAILURES, BOTH ACTUAL AND PERCEIVED, HAS BEEN REGULATION. ONE KIND OF MARKET FAILURE TO WHICH SEC REGULATION IS ADDRESSED IS INADEQUATE MARKET INFORMATION. IN A PERFECT MARKET, WHERE EVERYONE IS EXPERT, AND HAS EQUAL ACCESS TO ALL RELEVANT INFORMATION, FREE CHOICE WOULD LEAD PRODUCERS -- INCLUDING INVESTORS WHO SUPPLY CAPITAL -- TO ELECT TO PROVIDE THOSE GOODS AND SERVICES UPON WHICH CONSUMERS PUT THE HIGHEST VALUE RELATIVE TO THEIR COSTS OF PRODUCTION. BUT IN THE REAL MARKETS, PARTICIPANTS OFTEN ARE ONLY PARTIALLY OR ERRONEOUSLY INFORMED.

1/ STUDY ON FEDERAL REGULATION, SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS VOL. VI, P. 3, 95TH CONG., 2D SESS. (1978).

AMERICANS HAVE ATTEMPTED TO COMPENSATE FOR SUCH INADEQUACIES BY A GOVERNMENT ROLE IN THE PROVISION AND DISSEMINATION OF INFORMATION. IN THE CASE OF SEC CORPORATE DISCLOSURE REQUIREMENTS, REGULATION IS INTENDED TO PREVENT DECEPTIVE PRACTICES BY CORPORATE INSIDERS, WHILE LEAVING INVESTORS FREE TO BUY WHATEVER SECURITIES THEY WISH. PRESUMABLY, AS A RESULT OF FULL AND FAIR DISCLOSURE CAPITAL WILL THEN BE ALLOCATED IN THE BEST AND MOST EFFICIENT MANNER. 2/

ONE NAGGING PROBLEM WITH THIS ANALYSIS IS THAT GOVERNMENT MANDATED DISCLOSURE MAY ALSO BE DEFECTIVE AND LEAD TO THE DISSEMINATION OF INADEQUATE, DISTORTED OR SUPERFLUOUS MARKET INFORMATION. ONE REASON WHY THIS IS THE CASE IS THAT SOMETIMES DISCLOSURE REQUIREMENTS HAVE BEEN UTILIZED TO INFLUENCE CORPORATE BEHAVIOR.

THE SEC'S AUTHORITY TO MANDATE WHAT INFORMATION PUBLIC CORPORATIONS MUST DISCLOSE TO INVESTORS AND SHAREHOLDERS DERIVES FROM A NUMBER OF DIFFERENT STATUTORY SOURCES. INITALLY, THE SECURITIES ACT OF 1933 ("1933 ACT") REQUIRED PUBLIC CORPORATIONS TO MAKE DISCLOSURES CONCERNING THEIR BUSINESS AND FINANCIAL AFFAIRS ONLY WHEN ENGAGED IN PUBLIC DISTRIBUTIONS OF THEIR SECURITIES. THEN, THE NEXT YEAR,

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2/ ID. AT 18-20.

CONGRESS PASSED THE SECURITIES EXCHANGE ACT OF 1934 ("1934 ACT"), WHICH REQUIRED EXCHANGE LISTED CORPORATIONS TO FILE ANNUAL REPORTS WITH THE SEC AND TO MAKE CERTAIN DISCLOSURES IN PROXY SOLICITATIONS. IN 1964, THE UNIVERSE OF PUBLIC CORPORATIONS REQUIRED TO FILE ANNUAL AND PERIODIC REPORTS WITH THE COMMISSION WAS GREATLY EXPANDED BY WAY OF AMENDMENTS TO THE 1934 ACT. IN ADDITION, THE HOLDING OF THE SECOND CIRCUIT IN THE CASE OF SEC V. TEXAS GULF SULPHUR CO. 3/ PROSCRIBING THE MISUSE OF MATERIAL UNDISCLOSED CORPORATE INFORMATION BY INSIDERS AND THEIR TIPPEES CREATED A FURTHER IMPETUS FOR A SYSTEM OF CONTINUOUS DISCLOSURE BY PUBLIC CORPORATIONS.

TODAY, AS A RESULT OF MANY FACTORS, INCLUDING IMPROVED COMMUNICATIONS SYSTEMS, THE INCREASING COMPLEXITY OF MODERN BUSINESS, THE DOMINATION OF THE SECURITIES MARKETPLACE BY INSTITUTIONAL INVESTORS AND CHANGING LEGAL REQUIREMENTS, THE DISCLOSURE OF BUSINESS AND FINANCIAL INFORMATION BY PUBLIC CORPORATIONS IS A MORE SOPHISTICATED PROCESS THAN IT WAS IN 1933 AND 1934. IT IS THEREFORE RELEVANT AND ESSENTIAL TO ASK WHETHER THE ADMINISTRATION OF THE DISCLOSURE PROVISIONS OF THE SECURITIES ACTS HAS KEPT PACE WITH CHANGING TIMES; WHETHER SOME NEW APPROACHES TO DISCLOSURE POLICY NEED TO BE DEVELOPED BY THE SEC.

3/ 401 F.2D 833 (2D CIR. 1968), CERT. DENIED, 394 U.S. 976 (1969).

I AM HAPPY TO REPORT THAT THE COMMISSION AND ITS STAFF ARE ACTIVELY CONSIDERING NEW APPROACHES TO THE PROBLEM OF HOW BASIC INFORMATION ON CORPORATIONS CAN BEST BE COMMUNICATED, BOTH IN THE CONTEXT OF THE COMMISSION'S FORMAL, MANDATED DISCLOSURE SYSTEM AS WELL AS IN THE LESS FORMAL SYSTEM OF DIRECT COMMUNICATION BETWEEN CORPORATIONS AND USERS OF FINANCIAL INFORMATION.

THE SIDE BY SIDE EXISTENCE OF TWO DISCLOSURE SYSTEMS, ONE FORMAL AND REQUIRED BY LAW AND THE OTHER INFORMAL AND VOLUNTARY, HAS NOT GONE WITHOUT JUSTIFIABLE CRITICISM. IT CERTAINLY GIVES ME PAUSE, AS A COMMISSIONER OF THE SEC, ABOUT THE PURPOSE AND VITALITY OF THE FORMAL SYSTEM OF GOVERNMENT MANDATED DISCLOSURE. OVER THE COURSE OF TIME, THE COMMISSION'S FORMAL DISCLOSURE REQUIREMENTS HAVE EVOLVED INTO AN INCREASINGLY DETAILED AND COMPLICATED SYSTEM OF VIRTUALLY CONTINUOUS COMMUNICATION WHICH DOES PROVIDE SOPHISTICATED INFORMATION USERS WITH A WEALTH OF MATERIAL.

MOREOVER, AS A CONSEQUENCE BOTH OF THE COMPLEXITY OF CORPORATE AFFAIRS AND THE POTENTIAL LIABILITY FOR FAILURE TO MAKE CERTAIN DISCLOSURES, THERE HAS DEVELOPED A TREND FOR THE CORPORATE COMMUNITY TO DEMAND, AND THE COMMISSION TO PROVIDE, ELABORATE RULES AND REGULATIONS GOVERNING THE CONTENT OF CORPORATE DISCLOSURE. VIGOROUS LAW ENFORCEMENT BY THE COMMISSION AND EXPANDED CIVIL LIABILITY IN PRIVATE LAWSUITS HAVE GIVEN RISE TO A CLAMOR FOR ADMINISTRATIVE GUIDANCE BY THE BUSINESS COMMUNITY AND ITS COUNSEL. THE RESULT HAS BEEN PRESCRIPTIVE RULEMAKING WHICH PROBABLY DOES ALLEVIATE THE COMPLIANCE BURDEN FOR ISSUERS. BUT THE CUMULATIVE EFFECT IS THE PRODUCTION OF COMPLEX, CUMBERSOME INFORMATION OF LIMITED UTILITY TO MOST INVESTORS. AND THE PRODUCTION OF THIS INFORMATION IS COSTLY FOR INVESTORS AND CONSUMERS.

THIS CONCLUSION IS BORNE OUT BY SOME OF THE FINDINGS OF THE COMMISSION'S ADVISORY COMMITTEE ON CORPORATE DISCLOSURE, WHICH MET OVER A THIRTEEN MONTH PERIOD IN 1976 AND 1977 TO RE-EVALUATE THE COMMISSION'S DISCLOSURE SYSTEM. THE RESULTS OF THE COMMITTEE'S SURVEYS OF REGISTERED REPRESENTATIVES AND INDIVIDUAL INVESTORS INDICATE DEFICIENCIES IN THE COMMISSION'S DISCLOSURE SYSTEM.

THE INDIVIDUAL INVESTORS WHO WERE SURVEYED LISTED SUCH INFORMAL SOURCES AS COMPANY ANNUAL REPORTS, DAILY NEWSPAPERS, AND STOCKBROKERS AS PRIMARY INFORMATION SOURCES; COMMISSION REPORTS ARE CONSPICUOUSLY ABSENT FROM THEIR RANKING OF INFORMATION SOURCES. SIMILARLY, REGISTERED REPRESENTATIVES SURVEYED INDICATED THAT ALMOST HALF OF THEIR ACCOUNTS NEVER OR RARELY REQUEST A PROSPECTUS PRIOR TO INDICATING INTEREST IN A NEW ISSUER.

BY AND LARGE, THE MOST PROMPT AND EFFICIENT DISCLOSURE OF INFORMATION BY CORPORATIONS TO THE INVESTING PUBLIC IS ACCOMPLISHED BY AN INFORMAL, VOLUNTARY SYSTEM THROUGH THE USE OF PRESS RELEASES AND COMPANY REPORTS THAT ARE DIGESTED AND FURTHER DISSEMINATED BY THE FINANCIAL PRESS AND POPULAR MEDIA. WHETHER THIS IS BECAUSE OF THE COMPLEXITY, IRRELEVANCE, DULLNESS OR INACCESSIBILITY OF COMMISSION MANDATED DISCLOSURE OR FOR OTHER REASONS, I DO NOT KNOW . APPARENTLY, THE INFORMATION GENERATED BY THIS INFORMAL SYSTEM MEETS WITH A MORE FAVORABLE RESPONSE THAN DO DOCUMENTS PREPARED PURSUANT TO SEC FORMS AND FILED WITH THE COMMISSION. THE INVESTORS SURVEYED BY THE ADVISORY COMMITTEE STAFF INDICATED THAT THE COMPANY ANNUAL REPORT TO SHAREHOLDERS WAS THEIR CHIEF SOURCE OF INFORMATION, WITH OVER NINETY PERCENT OF THE RESPONDENTS REPORTING THAT THEY HAD READ THE ANNUAL REPORT.

THIS LESS FORMAL COMMUNICATION SYSTEM, HOWEVER, IS NOT WITHOUT ITS SHARE OF SHORTCOMINGS. MANY HAVE NOTED THAT ANNUAL AND QUARTERLY REPORTS AND PRESS RELEASES PROVIDE AN OVERLY OPTIMISTIC PICTURE OF CORPORATIONS. DESPITE THE ATTRACTIVENESS AND COMPREHENSIBILITY OF THESE DOCUMENTS, THEY OFTEN SERVE PROMOTIONAL NEEDS AT THE EXPENSE OF FULL AND MEANINGFUL DISCLOSURE. PRESS RELEASES ALSO HAVE BEEN CRITICIZED ON THIS GROUND. PRESS AND OTHER DISSEMINATORS OF INFORMATION INDICATED TO THE ADVISORY COMMITTEE'S STAFF THAT EARNINGS RELEASES FOCUS PRIMARILY ON "BOTTOM LINE" DATA, SUCH AS EARNINGS PER SHARE, WITHOUT ADEQUATE SUBSTANTIVE BACKGROUND AND ANALYSIS OF THE OPERATIONS BEHIND THE NUMBERS.

THE DEVELOPMENT OF A FREE MARKET INFORMATION SYSTEM IN COMPETITION WITH THE SYSTEM MANDATED BY THE GOVERNMENT IS NATURALLY OF CONCERN TO THE COMMISSION. THE PREDICATE FOR THE SECURITIES LAWS WAS THE INADEQUACY OF THE FREE MARKET INFORMATION SYSTEM IN PLACE IN 1933. NOW IT WOULD APPEAR THAT THE GOVERNMENT MANDATED SYSTEM MAY IN SOME WAY BE INADEQUATE. THE MARKETPLACE IS GIVING US A MESSAGE WHICH WE SHOULD HEED.

I BELIEVE THAT THE COMMISSION'S PROPER RESPONSE IS TO WORK TO BETTER RECONCILE AND INTEGRATE THE SUPPLY AND USE OF MARKET INFORMATION. THERE ARE TWO FORMS OF INTEGRATION WHICH SHOULD OCCUR. FIRST, THE INFORMATION WHICH IS FORMALLY MANDATED BY THE COMMISSION SHOULD BE RE-DEFINED WHERE NECESSARY AND MADE AVAILABLE IN A FORM WHICH THE PRIVATE SECTOR CAN EASILY INCLUDE AND USE IN ITS INFORMAL STREAM OF MARKET DATA. SECOND, WITHIN THE FORMAL SYSTEM ITSELF, THE COMMISSION MUST WORK TO BETTER INTEGRATE THE REPORTING REQUIREMENTS UNDER THE VARIOUS SECURITIES LAWS.

THE COMMISSION'S STATUTORY RESPONSIBILITY IS TO ASSURE THAT EXISTING AND PROPOSED REGULATIONS WILL RESULT IN DISCLOSURE OF TRULY MATERIAL INFORMATION TO SHAREHOLDERS IN AN ACCESSIBLE AND COMPREHENSIBLE FORM. REGULATORY REFORM WILL NOT SUCCEED, HOWEVER, UNLESS THE COMMISSION BECOMES LESS PRESCRIPTIVE IN ITS REQUIREMENTS, AND AGREES TO REASONABLE LIMITATIONS ON THE LIABILITY OF CORPORATIONS FOR LESS THAN PERFECT DISCLOSURE. THE COMMISSION, AS WELL AS THE BUSINESS COMMUNITY MUST BE RECEPTIVE TO INNOVATION AND EXPERIMENTATION. BUT PREOCCUPATION WITH LIMITING LIABILITY DOES NOT CREATE A SETTING FOR THIS SORT OF RISK TAKING.

THE COMMISSION IS CONSIDERING VARIOUS APPROACHES TO THE INTEGRATION OF DISCLOSURE STREAMS. ONE APPROACH MIGHT BE TO RECOGNIZE THAT INFORMATION NEEDS WILL VARY AMONG MEMBERS OF THE INVESTING PUBLIC. THE PROSPECT OF INTEGRATING FORMAL AND INFORMAL DISCLOSURE SHOULD NOT BE HINDERED BY REQUIRING THE DISCLOSURE OF INFORMATION THAT MAY NOT BE OF GENERAL INTEREST TO SHAREHOLDERS. FOR EXAMPLE, THE INFORMATION NEEDS OF USERS WITH SPECIAL INTERESTS MIGHT BE SATISFIED BY REQUIRING INFORMATION OF PARTICULAR INTEREST TO THEM, SUCH AS ENVIRONMENTAL DISCLOSURE, TO BE ON FILE WITH THE COMMISSION. ALTHOUGH SUCH INFORMATION WOULD BE PUBLICLY AVAILABLE, ITS APPEARANCE WOULD NOT BE MANDATED IN GENERAL INTEREST DOCUMENTS, SUCH AS ANNUAL REPORTS.

WITH REGARD TO MAKING FORMALLY MANDATED INFORMATION MORE USABLE TO THE PRIVATE SECTOR, IT APPEARS THAT THE COLLECTION AND AVAILABILITY BY COMPUTER OF CERTAIN MANDATED INFORMATION CAN BOTH SPEED UP THE PROCESSING OF DATA AND MAKE THE DATA MORE ACCESSIBLE, AND THEREFORE MORE USABLE, BY INVESTORS.

I REFERRED EARLIER TO THE CONSIDERABLE INTEREST OF INVESTORS IN COMPANY ANNUAL REPORTS AND THE EXTENSIVE USE OF THESE DOCUMENTS AS SOURCES OF INFORMATION. THIS IS IN MARKED CONTRAST TO THE LIMITED USE AND DISSEMINATION OF THE COMMISSION'S MORE TECHNICAL ANNUAL REPORT FORM, FORM 10-K. THE COMMISSION'S ADVISORY COMMITTEE ON CORPORATE DISCLOSURE RECOMMENDED THAT THIS FORM BE REVISED AND STREAMLINED TO MAKE IT A LESS IMPOSING AND MORE COMMUNICATIVE DOCUMENT.

AS MANY OF YOU ARE AWARE, THE COMMISSION PUBLISHED THE ADVISORY COMMITTEE'S FORM IN AUGUST OF LAST YEAR AND REQUESTED COMMENTS ON IT AND ON PART I OF THE FORM 10-K PRESENTLY REQUIRED TO BE FILED. THE STAFF HAS JUST COMPLETED ITS REVIEW OF THE COMMENTS AND EXPECTS TO MOVE QUICKLY ON THE NEXT PHASE OF THE FORM 10-K PROJECT. I UNDERSTAND THAT THE STAFF WILL RECOMMEND PUBLICATION OF A PROPOSED NEW FORM BASED UPON THE COMMITTEE'S RECOMMENDATIONS AND COMMENTATORS' SUGGESTIONS.

Revising the Form 10-K to streamline disclosure should also help to implement our goal of encouraging the integration of the Form 10-K and the annual report to shareholders. As many of you know, in 1977 the Commission published Guide 4 under the Exchange Act which permits such an integrated report to be filed. In so doing, the Commission stated its belief that such an "integrated document can be beneficial to shareholders and issuers alike because it may effect a general upgrading in the substance of publicly disseminated reports to shareholders and reduce the burden of compliance with SEC filing requirements." 4/ It is apparent that only a few companies have availed themselves of this option. According to a recent Business Week article, 5/ only four companies filed an integrated report for 1978. Of the few that have used Guide 4, most have simply included their 10-K report in the annual report without any attempt at integrating the information contained in the two reports.

4/ Securities Exchange Act Release No. 13639 (June 17, 1977).

5 "The Annual Report 1978: Thick and Innovative," Business Week, April 16, 1979, at p. 115.

ADMITTEDLY, THE LIMITED ACCEPTANCE OF GUIDE 4 MAY BE ATTRIBUTED TO SOME OF THE MORE ABSTRUSE INFORMATION REQUIRED TO BE INCLUDED IN A FORM 10-K WHICH SIMPLY DOES NOT LEND ITSELF TO PRESENTATION IN A DOCUMENT DESIGNED TO ATTRACT AND HOLD INVESTOR INTEREST. I AM NOT URGING, HOWEVER, THAT THE ANNUAL REPORT BE MADE A FILED DOCUMENT OR BE SUBJECTED TO GREATER REVIEW BY THE COMMISSION THAN IT IS TODAY. RATHER, I HOPE THAT OUR EFFORTS TO MAKE THE FORM 10-K A MORE EFFECTIVE REPORT WILL ENCOURAGE MORE COMPANIES TO CONSIDER DEVELOPING MORE UNDERSTANDABLE ANNUAL AND PERIODIC REPORTS THAT CAN SATISFY THE NEEDS OF INFORMATION USERS AS WELL AS THE COMMISSION. IN THIS CONNECTION, THE STAFF IS ALSO CONSIDERING CHANGES TO THE FORM 10-K REQUIREMENTS THAT GO BEYOND THE RECOMMENDATIONS OF THE ADVISORY COMMITTEE. WE HOPE TO ELIMINATE SOME OF THE MORE TECHNICAL REQUIREMENTS THAT RESULT IN THE DUPLICATION IN COMMISSION REPORTS OF INFORMATION THAT MAY ALREADY BE AVAILABLE FROM OTHER SOURCES.

AN EXAMPLE OF COMPUTER PROCESSING OF FORMALLY MANDATED DISCLOSURES, HAS OCCURRED UNDER SECTION 13(F) OF THE 1934 ACT, WHICH REQUIRES REPORTING ON PORTFOLIO STATUS FROM INSTITUTIONAL INVESTORS. THE COMMISSION HAS CONTRACTED WITH PRIVATE VENDORS TO MAKE THIS DISCLOSURE AVAILABLE IN COMPUTER-PROCESSED FORM. THIS INFORMATION IS BEING PROVIDED TO THE PUBLIC IN A VARIETY OF FORMATS AND IS BEING USED FOR SUCH PURPOSES AS ANALYSIS OF BLOCK TRADING AND CHANGES IN

PORTFOLIO STRUCTURE. A POSSIBLE USE OF 13(F) INFORMATION IS AN APPLICATION THAT CAN HELP FULFILL ONE OF THE FUNDAMENTAL PURPOSES OF THE SECURITIES LAWS: -- COMPARISON SHOPPING AMONG SUPPLIERS OF INVESTMENT MANAGEMENT AND ADVISORY SERVICES. 6/

ANOTHER WAY TO CLOSE THE GAP BETWEEN THE PRIVATE SECTOR AND GOVERNMENT MANDATED DISCLOSURE SYSTEMS IS TO INTEGRATE THE COMMISSION'S OWN TWO SEPARATE DISCLOSURE SYSTEMS. THESE ARE THE DIFFERING REQUIREMENTS IN CONNECTION WITH OFFERS AND SALES OF SECURITIES UNDER THE 1933 ACT, AND THOSE THAT MUST BE MET IN PREPARING AND FILING ANNUAL AND PERIODIC REPORTS UNDER THE 1934 ACT. AS MANY COMMENTATORS HAVE NOTED, THE HISTORICAL ACCIDENT OF THE TWO PRIMARY FEDERAL SECURITIES STATUTES BEING ENACTED A YEAR APART HAS RESULTED IN THE EVOLUTION OF TWO DISTINCT SYSTEMS OF REGULATION. HOWEVER, THESE STATUTES OSTENSIBLY SERVE THE SAME PURPOSE, THE FULL AND FAIR DISCLOSURE OF MATERIAL INFORMATION IN CONNECTION WITH SECURITIES TRANSACTIONS. WHETHER INVESTORS ARE PURCHASING SECURITIES DIRECTLY FROM ISSUERS OR CONTROL PERSONS, OR ARE MAKING SUCH PURCHASES IN THE TRADING MARKETS DOES NOT HAVE MUCH BEARING ON THE MATERIALITY OF INFORMATION BEING DISSEMINATED. MANY HAVE CITED THE DUPLICATIVE

6/ THIS POSSIBLE USE OF SECTION 13(F) DISCLOSURE WAS INDICATED BY FORMER COMMISSION CHAIRMAN RAY GARRETT, JR. IN HIS 1974 TESTIMONY SUPPORTING THE ENACTMENT OF SECTION 13(F). SUBCOMMITTEE ON SECURITIES OF THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, HEARINGS ON S.2234 AND S.2683, 93RD CONG., 2D SESS. 21 (AUG. 13 AND 14, 1974).

DISCLOSURE ENGENDERED BY THIS SIDE-BY-SIDE REGULATORY FRAMEWORK AS CONTRIBUTING TO THE INCREASING SIZE AND COMPLEXITY AND THE DIMINISHING INVESTOR INTEREST IN PROSPECTUSES AND REPORTS FILED WITH THE COMMISSION. A GOAL OF INTEGRATION IS TO ASSURE THAT BASIC INFORMATION NECESSARY FOR INFORMED INVESTMENT DECISION MAKING IS FURNISHED WITHOUT REPEATING INFORMATION THAT ALREADY HAS BEEN DISCLOSED.

THE BEST EFFORT AT INTEGRATION OF THE 1933 AND 1934 ACTS WHICH THE COMMISSION HAS MADE TO DATE IS THE FORM S-16. THIS IS A SHORT REGISTRATION FORM WHICH CONTAINS A BASIC DESCRIPTION OF THE MATERIAL TERMS OF A PARTICULAR OFFERING WITH MORE GENERAL INFORMATION ON A CORPORATION AND ITS BUSINESS PROVIDED THROUGH THE INCORPORATION BY REFERENCE OF REPORTS FILED UNDER THE 1934 ACT. THE RESULTING DOCUMENT CONTAINS SOME SPECIFIC INFORMATION ABOUT THE OFFERING, WITH THE MORE GENERAL CORPORATE INFORMATION AVAILABLE TO THOSE PROSPECTIVE INVESTORS WHO DESIRE IT AND REQUEST COPIES OF THE INCORPORATED MATERIALS.

THE OBJECTIVE OF THE FORM S-16, AND OF INTEGRATION IN GENERAL, IS EASY ACCESSIBILITY OF ALL MATERIAL INFORMATION TO INVESTORS, GIVING DUE REGARD TO THE POSSIBILITY THAT NOT ALL INVESTORS WILL WANT OR NEED EXTENSIVE INFORMATION IN A PROSPECTUS THAT IS AVAILABLE THROUGH THE COMMISSION'S 1934 ACT REPORTS OR OTHER SOURCES. AN ADDITIONAL BENEFIT,

OF COURSE, IS THE COST AND TIME SAVING TO COMPANIES IN THE CAPITAL RAISING PROCESS. I AM AWARE THAT THE ABILITY OF AN UNDERWRITER TO SELL SECURITIES WHEN MARKET CONDITIONS PERMIT, FREE FROM THE NECESSARY BUT ANNOYING DELAYS CAUSED BY THE PROCESSING OF REGISTRATION STATEMENTS, IS VERY IMPORTANT TO THE CAPITAL RAISING PROCESS. I BELIEVE THAT ONE WAY TO GIVE UNDERWRITERS AND ISSUERS THE ABILITY TO MARKET SECURITIES AT THE TIME A SELLING WINDOW OPENS IS TO FULLY INTEGRATE 1933 AND 1934 ACT DISCLOSURE REQUIREMENTS.

WITHIN THE PAST YEAR, THE COMMISSION HAS EXPANDED THE AVAILABILITY OF FORM S-16 TO PRIMARY SECURITIES OFFERINGS DIRECTLY TO THE PUBLIC BY CERTAIN HIGH QUALITY ISSUERS AND THEIR SUBSIDIARIES, AND TO OFFERINGS IN CONNECTION WITH CERTAIN DIVIDEND AND INTEREST REINVESTMENT PLANS AND RIGHTS OFFERINGS. THE STAFF IS CONSIDERING OTHER WAYS IN WHICH THE FORM COULD BE MADE AVAILABLE TO A LARGER SEGMENT OF ISSUERS FOR A WIDER VARIETY OF TRANSACTIONS, AS WELL AS OTHER MEANS THROUGH WHICH THE INTEGRATION CONCEPT CAN BE FURTHERED. I MIGHT ADD THAT TO THE EXTENT THE COMMISSION ACHIEVES PROGRESS IN DEVELOPING 1934 ACT REPORTS THAT ARE MORE INFORMATIVE AND USEFUL, WE ANTICIPATE THAT THE INTEREST IN AND USE OF OUR CONTINUOUS REPORTING SYSTEM IN THE CONTEXT OF SECURITIES OFFERINGS WILL ALSO BE ENHANCED.

I RECOGNIZE THAT FORM S-16 HAS GENERATED SOME CONTROVERSY ABOUT THE LIABILITY OF UNDERWRITERS AND OTHER PARTICIPANTS IN A DISTRIBUTION OF SECURITIES FOR INFORMATION INCORPORATED BY REFERENCE IN A 1933 ACT PROSPECTUS. SIMILARLY, THE APPROPRIATE STANDARD OF LIABILITY FOR DIRECTORS AND OTHERS FOR INFORMATION DISSEMINATED IN A CONTINUOUS DISCLOSURE SYSTEM IS A TROUBLESOME ISSUE.

I REFERRED EARLIER TO THE TENDENCY OF CORPORATIONS TO DEMAND THAT THE COMMISSION PROVIDE MORE SPECIFICITY IN ITS DISCLOSURE RULES. ALTHOUGH MAKING COMPLIANCE EASIER FOR REPORTING COMPANIES, THIS OFTEN RESULTS IN THE CREATION OF UNDULY ARCANE DOCUMENTS WHEN CONSIDERED FROM THE VIEWPOINT OF MOST INVESTORS. AT THE HEART OF THIS PROBLEM IS AN ESSENTIAL TENSION BETWEEN AN EFFORT TO PROVIDE COMPANIES WITH MORE FLEXIBILITY AND FREEDOM IN DETERMINING THE NATURE AND CONTENT OF DISCLOSURE DOCUMENTS, AND THE COMMISSION'S OBLIGATION TO PROVIDE SUFFICIENT GUIDANCE TO ASSURE THE ABILITY OF COMPANIES TO PROMPTLY AND CONFIDENTLY COMPLY WITH STATUTORY REQUIREMENTS. ALTHOUGH THE COMMISSION SHOULD BECOME LESS PRESCRIPTIVE IN DISCHARGING ITS FUNCTIONS, IT MUST ALSO ASSIST COMPANIES IN COMING TO GRIPS WITH THEIR DISCLOSURE PROBLEMS. FURTHER, I KNOW THAT COMPANIES ARE NOT INTERESTED IN OBTAINING SUCH AN EDUCATION BY WAY OF ENFORCEMENT CASES. INDEED, THEIR REQUESTS FOR RULES EMANATE FROM A DESIRE TO AVOID THE HAZARDS OF LITIGATION.

AT THIS POINT, I BELIEVE I SHOULD MENTION A CAVEAT CONCERNING THE REPLACEMENT OF THE PRESENT DUAL SYSTEMS OF 1933 AND 1934 ACT DISCLOSURE WITH A SINGLE CONTINUOUS INTEGRATED DISCLOSURE SYSTEM. MUCH INFORMATION ABOUT A COMPANY APPLICABLE TO ITS OPERATIONS ON A CONTINUING BASIS NEED NOT BE PRESENTED TO SHAREHOLDERS EACH TIME THEY MAKE AN INVESTMENT DECISION OR VOTE. THIS INFORMATION HAS BEEN ADEQUATEDLY DIGESTED BY ANALYSTS OR SHAREHOLDERS AND IS REFLECTED IN THE MARKET PRICE OF THE ISSUER'S SECURITIES. HOWEVER, FROM TIME TO TIME THERE ARE UNIQUE CORPORATE TRANSACTIONS, SUCH AS THOSE RESULTING IN ISSUERS GOING PRIVATE, FOR WHICH ADDITIONAL DISCLOSURES ARE NECESSARY FOR FULL COMPREHENSION. SUCH TRANSACTIONS MAY HAVE A MARKET IMPACT AS GREAT IF NOT GREATER THAN A DISTRIBUTION OF AN ISSUER'S SECURITIES. THE COMMISSION SHOULD REQUIRE ADEQUATE DESCRIPTION OF THESE TRANSACTIONS WITHOUT ADOPTING GENERAL REQUIREMENTS WHICH WOULD IMPOSE DISCLOSURE BURDENS IN INAPPLICABLE OR ROUTINE CIRCUMSTANCES.

IN THIS CONNECTION, THE COMMISSION SHOULD AND WILL CONTINUE TO PUBLISH STAFF INTERPRETATIONS, VIEWS AND PRACTICES WITH RESPECT TO THE ADMINISTRATION OF EXISTING DISCLOSURE REQUIREMENTS IN THE CONTEXT OF SPECIFIC CORPORATE TRANSACTIONS.

OUR RECENT RELEASE PUBLISHING THE DIVISION OF CORPORATION FINANCE'S VIEWS REGARDING DISCLOSURE OF CERTAIN MULTI-STEP SALE OF ASSETS TRANSACTIONS 7/ IS A GOOD EXAMPLE OF HOW WE CAN PROMOTE THE DISCLOSURE OF MEANINGFUL INFORMATION TO AFFECTED SHAREHOLDERS AND PROVIDE GUIDANCE TO ISSUERS IN FULFILLING THEIR DISCLOSURE OBLIGATIONS. I WANT TO STRESS THE IMPORTANCE I PLACE ON THE PUBLICATION OF SUCH INTERPRETATIVE RELEASES IN THE ADMINISTRATIVE PROCESS BECAUSE I DISSENTED FROM THE INSTITUTION OF ENFORCEMENT PROCEEDINGS AGAINST AN ISSUER WHICH HAD FAILED TO MAKE SUCH DISCLOSURES IN PRELIMINARY PROXY MATERIAL. 8/ I FELT THAT THE APPROPRIATE WAY FOR THE COMMISSION TO COMMUNICATE ITS VIEWS ON THE DISCLOSURE IT DESIRED WAS THROUGH A RELEASE RATHER THAN AN AD HOC ADJUDICATION.

I HAVE ATTEMPTED TO HIGHLIGHT SOME OF THE WAYS IN WHICH THE COMMISSION IS ATTEMPTING TO IMPROVE CORPORATE DISCLOSURE BY WAY OF REGULATORY REFORM. THE CONCOMITANT RESPONSIBILITY OF CORPORATIONS IS TO REASSESS THEIR OWN COMMUNICATION SYSTEMS WITH A VIEW TOWARD INCREASING CANDOR IN DESCRIBING BOTH FAVORABLE AND UNFAVORABLE DEVELOPMENTS AND TO BE INNOVATIVE IN PROVIDING INFORMATION TO INVESTORS BEYOND THE

7/ SECURITIES ACT RELEASE NO. 15572 (FEB. 15, 1979).

8/ IN THE MATTER OF SPARTEK, INC, SECURITIES EXCHANGE ACT RELEASE NO. 15567 (FEB. 14, 1979).

SPECIFIC MANDATES OF COMMISSION REQUIREMENTS. INCREASED CORPORATE RESPONSIBILITY FOR DISCLOSURE, AND INCREASED COMMISSION ATTENTION TO THE DEVELOPMENT OF REALISTIC REGULATIONS WILL PROMOTE THE COMMUNICATION OF PRACTICAL, USEFUL, INFORMATION. I BELIEVE WE CAN IN THIS WAY MORE CLOSELY APPROACH THE PROPER FUNCTION OF THE COMMISSION'S DISCLOSURE SYSTEM THAT WAS IDENTIFIED BY THE ADVISIORY COMMITTEE: TO ASSURE PUBLIC AVAILABILITY IN AN EFFICIENT AND REASONABLE MANNER ON A TIMELY BASIS OF RELIABLE, FIRM-ORIENTED INFORMATION MATERIAL TO INFORMED INVESTMENT AND CORPORATE SUFFRAGE DECISION MAKING.