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FOREIGN INVESTMENT IN THE UNITED STATES

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I appreciate the opportunity to participate in this conference on worldwide investment in the United States. I recently returned from two very busy weeks familiarizing myself with securities markets in London, Zurich, Paris, Frankfurt and Amsterdam, and futhering my understanding of the differences, in both culture and regulation, among the various markets and regulatory philosophies.

While my trip did not make me an expert on the European securities markets, it did, among other things, confirm my sense that that we are in an era of increasingly international capital flows. When one Canadian company can attempt to takeover another Canadian company utilizing the facilities of the London and American Stock Exchanges, we truly are dealing with international markets. Accordingly, the Securities and Exchange Commission needs to be knowledgeable about the similarities and differences between markets, both so that we better understand the relationship of our evolving national market system to the growing internationalization of the securities markets, and so that we are conscious of the impact we have on the ability of the marketplace to function effectively as a capital allocating mechanism. We need increasingly to examine issues, such as market structure and disclosure, with an international as well as a national perspective.

To understand the different markets it is necessary to explore the philosophies underlying American and other approaches to regulation of securities, and securities markets -- approaches which, in a sense, are reflective of the differences in culture and regulatory philosophy. For example, in the broadest sense, the Commission's responsibility is to foster investor confidence in the integrity and fairness of the capital-raising process and our main tool in performing this task is disclosure -- both initially when a corporation offers securities to the public and on a continuing basis. The philosophy, however, of most other countries, to varying degrees, has been one of greater confidentiality in business and investment transactions. In addition, there is not as broad an individual investor base as in the U.S., nor as great a tradition of entrepreneurship, raising of venture capital and going public.

By highlighting the disparate philosophies of securities regulation, I do not mean to suggest that it is impossible to reconcile or harmonize the differences. In fact, I believe that the growing internationalization of the world capital markets, and efforts of organizations such as the OECD, hold the promise of increasing harmonization of requirements. Moreover, the growing internationalization of the capital markets is just one part of the movement toward an increasingly interdependent and integrated free market world economy. Many of the problems of concern to the Commission, such as insider trading, accounting principles, inflation accounting, options, commission rates, and merger and consolidation in the securities industry are also receiving attention in many other countries.

This afternoon I would like to discuss some specific areas of the federal securities laws that are generally of concern to foreign companies and investors. I want particularly to focus on disclosure requirements, acquisitions and tender offers, foreign broker access to U.S. markets and the Foreign Corrupt Practices Act, since each of these four areas is, at present, an important factor in the slowly evolving mosaic of a "world market system" -- a phenomenon increasingly more inevitable as economics and technology draw us closer and closer together.

DISCLOSURE MATTERS

As I mentioned earlier, disclosure is the centerpiece of the federal securities laws. However, in administering the disclosure requirements with respect to non-U.S. issuers, the Commission is faced with something of a dilemma between the information needs of U.S. investors and the attitude toward disclosure of other countries -- a dilemma which is at the heart of our present review of the disclosure requirements for foreign issuers. On the one hand, the Commission's adoption of the present disclosure requirements for domestic issuers evidences a finding that such information is meaningful to investors in enabling them to make intelligent investment decisions. On the other hand, the Commission does not wish to unduly deprive foreign issuers of access to the U.S. capital markets or American investors of the opportunity to invest in such securities. But purely from the standpoint of protecting and informing investors, it is difficult to articulate a reason for permitting securities issued by, say, a company headquartered in London to trade in the U.S. on the basis of less information than that disseminated by a firm in Los Angeles. Presumably, the American investor's information needs are the same in both cases.

In the past, the Commission endeavored to establish a middle ground and strived to assist non-U.S. issuers in complying with our requirements. While the Commission generally has been reluctant to treat foreign issuers very much differently from domestic issuers when they make a public offering of securities to U.S. residents, it has been somewhat more receptive to easing certain of the continuous disclosure requirements for foreign securities which are voluntarily listed on exchanges in the U.S. And, the Commission has still further relaxed its requirements for foreign issuers whose securities are owned by United States residents, but where the issuer has taken no affirmative action either to list or issue securities to Americans.

In the nonfinancial area, the concessions for foreign issuers offering their securities in the United States have been limited, for the most part, to management remuneration disclosures; there the Commission has accepted aggregate figures, in accordance with foreign customs and practices, rather than requiring disclosures on an individual basis. Similarly, the Commission has allowed some deviation for financial reporting on a case-by-case basis. Generally, the Commission has accepted, where practicable, footnote disclosures in financial statements which reconcile the effects of differences in foreign and U.S. accounting principles rather than requiring a restatement of the foreign accounts.

Several years ago, in an effort to reassess the situation and determine whether a different middle ground should be established, the Commission proposed amendments to its foreign issuer periodic disclosure requirements, today reflected, for the most part, in Forms 20 and 20-K. The amendments, as proposed, would create a new Form 20-F and would result in certain reporting foreign issuers becoming subject, for the first time, to substantially the same registration and annual reporting disclosure requirements as domestic issuers.

The commentators responding to this proposal were almost unanimously critical. The foreign issuer commentators primarily objected to financial reporting by industry segments, disclosure of management remuneration by individual, acceleration of the deadline for filing the annual report from six to four months after the end of year, and the requirement of English translations of certain documents. Other additional disclosure requirements generated little or no adverse comment. However, many issuers did cite potentially increased total compliance expenses, and a number of these commentators indicated that they would have to re-evaluate their participation in the U.S. capital markets, in terms of their own benefits and costs, if the proposals were adopted. Nonissuer commentators also were generally opposed to the proposal, although without rejecting the concept of more meaningful disclosure *per se*.

Some commentators who were critical of the objective of providing substantially similar disclosure suggested alternative standards. These proposals included reciprocal or country-of-origin treatment, deference to international standards, application only to prospective registrants or reporting issuers, differentiation between issuers from the developed and less-developed countries, differentiation based on whether debt or equity securities are involved, and consideration of other factors, including whether the foreign issuers are regulated by specific governmental authorities in their domiciles and are thus subject to specialized reporting requirements.

I should also note that during my recent trip several people criticized our proposals as an assertion of extra-territorial jurisdiction. I do not believe that *any* question of extraterritoriality is involved when a foreign issuer seeks to avail itself of a major capital market and that market has stringent requirements which it wishes to apply equally to all issuers, domestic and foreign. Indeed, although there are legitimate areas of concern, the word "extraterritorial" seems to have become a sort of shibboleth.

In any event, however, in view of the negative comment which our foreign issuer proposals evoked, we are exploring the matter further, including consideration of, for example, the possibility of looking to international standards of disclosure for guidance. The Organization for Economic Cooperation and Development could be one potential source of such guidance. In 1976, the OECD adopted a "Declaration on International and Multi-National Enterprises," a part of which consists of guidelines which the multi-national enterprises are expected to observe, including one pertaining to disclosure of information. The OECD also adopted another guideline in 1976 dealing with the nature and extent of information which should be disclosed in prospectuses for public offerings entitled "OECD Minimum Disclosure Rules Applicable to All Publicly Offered Securities." While these guidelines are only advisory, and apparently few foreign issuers comply with all their provisions, they hold the promise of more uniform disclosure requirements in the future.

Additional harmonization is occurring as a result of the trend in European company laws for more company specific disclosure. The Commission also must recognize that <u>we</u> need to be prepared to reassess certain of our own requirements if greater harmonization is to be achieved.

I am similarly encouraged by the efforts toward harmonizing international accounting standards. In the past, differences in accounting principles, particularly with respect to consolidation, reserve accounting, and line-of-business reporting, have stood in the way of greater foreign issuer participation in the U.S. capital markets. I think the differences are being reduced.

The European community and others are struggling with many of the same accounting issues as we in the U.S., and the high regard with which the Financial Accounting Standards Board is held throughout the world should assist in achieving greater harmonization. In addition, more companies are reporting on a basis very near to U.S. generally accepted accounting principles. This should help pave the the way to greater participation by foreign issuers in our our capital markets.

The Commission's practice is to endeavor to reach an appropriate accommodation with foreign issuers based on the facts. Depending on the materiality of the variance between foreign and U.S. standards, the Commission may require a footnote explanation of differences, a footnote reconciliation or a restatement of the financials. Because of the complex problems involved, the Commission's staff is available for prefiling discussion and review.

My recent trip to Europe also served as a reminder that, while the world capital markets are becoming increasingly international, 4,000 miles and 200 years of divergent economic and social tradition still separate the United States and Europe. Both the physical and the cultural distance may account for the misunderstanding and confusion concerning the Commission which sometimes surfaces in Europe and other parts of the world. Of course, a similar failure to appreciate the impact of our actions on international capital flows sometimes manifests itself in Washington. While neither of these tendencies will disappear over night, I hope that my trip established more of an open door between the Commission and our European counterparts, as well as between foreign issuers and our agency. All of us stand to gain if our decisions are made on the basis of accurate information rather than misunderstanding.

ACQUISITIONS AND TENDER OFFERS

Although much more could be added to a discussion of the disclosure considerations which confront a foreign issuer seeking to establish a market for its securities or raise capital in the U.S., I would like to turn to an examination of the other side of the coin. The past several years have seen a tremendous growth in foreign investment in the United States. I can readily understand the attraction of the U.S. markets and economy -- despite our inflation and lack of a sensible and disciplined energy policy. The United States is still a country that believes in free enterprise, capitalism and private wealth. The U.S. market is also the largest and most developed in the world, the most politically and economically stable, the most homogenous and the most receptive to innovation.

The American people and their legislators have, however, quite understandably I think, been somewhat anxious about the flow of foreign investment into the U.S. and the long-term implications of that process. Nevertheless, contrary to the practice in a number of other countries, the federal government generally does not prohibit or limit foreign investment in American companies. Rather, its requirements apply equally to all -- foreign or domestic. This is certainly true under the securities laws. For example, the Securities Exchange Act requires disclosure of purchases of securities above a certain level by any purchaser, foreign or domestic, and provides a regulatory framework which must be complied with for certain acquisitions made in the form of tender offers, again regardless of whether the bidder is domestic or foreign.

The provisions of the federal securities laws governing acquisitions and tender offers are contained in the Williams Act, which was enacted in 1968 and amended in 1970. The basic philosophy of the Williams Act is principally one of disclosure -- a theme which is, of course, familiar throughout the federal securities laws.

The provisions of the Williams Act govern not only tender offers, but also nontender acquisitions of securities. Purchases of American securities by foreigners, as well as by U.S. residents, trigger disclosure requirements when holdings reach five percent of a class of equity securities outstanding. The ownership interests of two or more persons acting as a group are aggregated in determining whether the five percent test has been met, and looks behind record ownership to beneficial ownership. The beneficial ownership provisions require that certain reports must be filed with the Commission, and that those reports disclose various categories of information relating primarily to the identity and background of the purchasers, the purpose of the purchases -- including whether control of the issuer is being sought -- and whether any changes in the corporate structure, assets, policies, or management of the issuer are planned. These and other companion provisions are designed to provide an information base as to "who owns corporate America." These requirements were established at a time when there was little foreign ownership and without detailed consideration of the confidentiality concerns of foreign purchasers. Nonetheless, the requirements apply to foreign investors, even if their purchases are made outside of the U.S., and the legislative purpose is such that we are not receptive to different treatment for foreign purchasers.

Similar information must be disclosed in a report filed with the Commission and disseminated to shareholders when a tender offer is made. In addition, while the Williams Act does not direct the Commission to pass on the merits of tender offers, it contains regulatory requirements -- such as withdrawal and proration rights -- which are designed to assure all shareholders fair treatment.

The potential application of these provisions to a foreign investor's activities may be a significant factor in its decision-making. For example, there are certain types of activities which the Commission does not regulate

-- foreign acquisition of real estate and construction of new plant facilities paid for in cash are two illustrations of investment vehicles outside the ambit of the federal securities laws. Similarly, although acquisition of a publicly-owned company is within the Commission's jurisdiction, different means of effecting the acquisition may produce different disclosure consequences. For example, purchases for cash subject the acquiror to the ownership disclosure requirements and to the tender offer rules. On the other hand, acquisition by issuance of acquiror securities additionally would require Securities Act registration and would subject the acquiror to the full jurisdiction of the Commission. Foreign investor acquisitions are, however, rarely effected by issuing securities because securities of most foreign companies do not have an established American market and, therefore, are not readily accepted by U.S. investors. For that reason, foreign companies would be well advised to consider seasoning their securities in the American market to provide the future alternative of acquisitions for stock.

The proliferation of tender offers and other acquisitions of control in recent years has focused attention on possible gaps in the Williams Act for transactions which fall somewhere in between mere acquisitions of beneficial ownership of over five percent and tender offers. The Commission is exploring the need for greater integration of these provisions, either through rulemaking or proposals for legislation. In addition, the Commission recently proposed extensive amendments to its tender offer rules. I do not foresee, however, that any of these efforts would entail a retreat from the principle of equal treatment for domestic and foreign offerors.

Before leaving the subject of acquisitions and tender offers, it is important to note that the federal securities laws are not the sole regulatory provisions which should be considered in this area. Special federal laws may restrict foreign ownership of companies engaged in endeavors in the national interest -- such as defense, communications, etc. In addition, a number of states have passed their own takeover statutes. While the Commission and the states cooperate in administering statutory schemes that preserve the states' traditional regulation of securities transactions within their own borders, many of the new state takeover laws substantially depart from the traditional form of state regulation. The provisions of these laws dealing with extraterritorial jurisdiction and precommencement disclosure requirements may conflict with the purposes and provisions of the Williams Act. The validity of one such law -- the Idaho Corporate Take-Over Law -- currently is being reviewed by the U.S. Supreme Court in the case of Leroy v. Great Western United Corporation. The outcome of this case will have important implications for tender offers, foreign and domestic alike.

FOREIGN BROKER ACCESS TO U.S. SECURITIES MARKETS

A corollary to the growing internationalization of the world capital markets is the broader involvement of foreign broker-dealers in the U.S. securities markets as exchange members and otherwise.

A foreign-based or foreign-controlled broker-dealer is not prohibited from registering as a broker-dealer under the Securities Exchange Act of 1934. Until recently, however, the membership policies of the various self-regulatory organizations, in particular the New York and American Stock Exchanges, excluded most foreign-controlled broker-dealers from membership. The Securities Acts Amendments of 1975 largely resolved this matter by prohibiting self-regulatory organizations from denying membership on the basis of foreign parentage or control, and the NYSE recently has admitted to membership two foreign-controlled broker-dealers. While many serious questions with respect to examination and surveillance of foreign broker-dealers and their parents remain, I expect that the foreign entities involved will cooperate in working out an appropriate solution.

The newly enacted International Banking Act of 1978 may also have an impact on foreign interests in the securities industry. The provisions of that Act which are most relevant for our purposes are those which attempt to establish parity of treatment between foreign and domestic banks. In that regard, the Act provides that any foreign bank maintaining a branch or agency in the U.S., any foreign bank or company that controls a commercial lending company, and certain other companies shall be subject to the nonbanking and anti-tying prohibitions of the Bank Holding Company Act of 1956. A foreign bank not already grandfathered would, therefore, have to forego doing any commercial banking in the United States if it wished to act as a dealer in corporate securities or to engage in any other securities activity prohibited to registered bank holding companies.

My recent trip to Europe reminded me that, to many outside our borders, the restrictions on bank activities in the securities area engender an air of bemusement. In most European countries, there are no restrictions on banks' participation in securities activities. And, perhaps as a result, there is little, if any, securities industry; the banks perform the industry's functions, to the extent they are performed. Conversely, European bank ownership of corporations, direct and through investment accounts of clients, board participation in, and occasionally, control of major corporations are phenomena not found in the United States. The extent to which the banks' broader role is a cause of different public attitudes toward investment, or the extent to which it is an effect of those attitudes, are issues worth exploring.

FOREIGN CORRUPT PRACTICES ACT

Let me now turn to another federal law that may seem strange to many outside the U.S. -- the Foreign Corrupt Practices Act. The Act was passed in December 1977 in response to widespread revelations of questionable payments by U.S. companies here and abroad. The anti-bribery provisions make it a crime for corporations registered with the Commission to bribe officials of foreign governments to obtain business. The accounting provisions of the Act, on the other hand, mandate accurate recordkeeping and effective internal accounting control throughout all phases of an issuer's business, foreign and domestic.

Some concern has been voiced recently that the anti-bribery provisions of the Act are costly to U.S. business in terms of lost business. Some in the business community have complained that these restrictions put American multinational corporations at a disadvantage, in part because many of their competitors do not operate under similar restraints.

I am not presently aware of any empirical evidence or other verifiable data that would support the suggestion that the Act is having a significant effect on American foreign trade. The Act would be expected to have some effect. However, any economic costs resulting from its enactment must be viewed in light of the objective that the Congress set forth as a primary reason for the legislation -- that, as a matter of national policy, corporate bribery should not be condoned. Congress viewed corporate bribery as unethical, inconsistent with the principles of a free market economy, and a source of embarrassment in the conduct of the Nation's foreign policy and enacted legislation which prohibits conduct President Carter called "ethically repugnant and competitively unnecessary."*/

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*/ 13 Week Compilation of Presidential Documents 1909 (Dec. 21 , 1977).

In any event, however, from the Commission's standpoint -- and from the standpoint of the investor protection goals underlying the federal securities laws -- the accounting provisions rather than the anti-bribery sections are the more significant feature of the new Act. The accounting provisions seem to contain little potential for complicating legitimate transnational corporate operations, although difficult questions may arise concerning the application of the recordkeeping requirements to foreign affiliates of U.S. issuers, to foreign issuers with securities traded in our markets, and to the American subsidiaries of foreign parents when those subsidiaries have a public minority. The Commission is aware of these potential problem areas and intends to administer the accounting provisions in a fashion consistent both with Congress' demand for enhanced accountability for the integrity of corporate records and their impact on financial reporting, and with sensitivity to differences, if any, in accounting and control methodologies of those essentially foreign enterprises which are subject to the Act.

CONCLUSION

In conclusion, while the responsibility of the Securities and Exchange Commission to protect investors has not changed, we can no longer examine the impact of our actions only on New York and Los Angeles; we must look also to London and Amsterdam. Similarly, we must participate fully in the work of the OECD and in other international efforts. The world's capital markets are becoming increasingly international in scope, and the Commission must examine the extent to which the federal securities laws and its administration of them are consistent with that trend. Access to the U.S. market should be as open as possible, as should access to all capital markets, consistent with protection of the integrity of the market and the securities offered.

In the past, we in the United States have viewed our securities market as not only the best in the world, but -- for all practical purposes -- as the only market. But our market no longer operates alone. It is our commitment that it will continue to be the best -- in terms of integrity, fairness, liquidity, and breadth of public ownership -- and the most attractive to sound investors throughout the world.

Thank you.