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**News
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Luncheon Address of

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The SEC and NASAA - A Spirit of Cooperation

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

The SEC and NASAA - A Spirit of Cooperation

I. Introduction

Good afternoon! Again, it is my pleasure to address this annual gathering of state and federal securities regulators organized under the joint sponsorship of the Commission and the North American Securities Administrators Association, Inc. I also welcome the representatives from the New York Stock Exchange, American Stock Exchange, and the National Association of Securities Dealers who are attending some of the sessions being held today. This year has been an exemplary one for the cooperative spirit mandated by Congress in Section 19(c) of the Securities Act. Under the leadership of NASAA's President John Baldwin, the interchange between the Commission and NASAA has produced a very successful unified regulatory effort. This effort is in accord with the Congressional will behind our charter to collaborate and cooperate to reach the common goals of --

- (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.^{1/}

^{1/} Section 19(c) of the Securities Act of 1933, 15 U.S.C. 77s(c).

In the coming year, the Commission and its staff look forward to continuing this trend under President-elect Susan Bryant's administration. Ms. Bryant has been a strong and persuasive representative for NASAA in the past, and I am confident that our success will continue during her Presidency.

II. Enforcement

One of the greatest challenges for both federal and state regulators in the face of increasingly tight budgets is effective law enforcement. We have joint needs and responsibilities in this area and cooperation between us has paid dividends in the past and will continue to do so in the future. We must continue this cooperative spirit in the enforcement of our respective laws.

At last year's conference, the enforcement working group highlighted the burgeoning concerns associated with the so-called "blank-check" companies. 2/ While these issues have given rise to many concerns and a number of enforcement proceedings, they are really a subclass of broader far-reaching abuses in the penny stock market. Since the securities of issuers in this market often become subject to domination and control by a single market maker, or cooperating group of market makers, increased opportunities for manipulation may be present. Last summer, the Commission, through its broker-

2/ See Final Report, NASAA/SEC 1988 Conference on Federal-State Securities Regulation at 4 (August 1988).

dealer examination program, made a special sweep of penny stock firms. Of the 17 examinations done, 14 resulted in enforcement referrals. In addition, during 1988, the Commission initiated more than 25 enforcement actions involving fraud and abuse in the penny stock market and suspended over-the-counter trading in well over 100 penny stocks.

Last fall, the Commission instituted a task force on penny stock manipulation charged with identifying the problems associated with this activity, finding regulatory solutions to those problems, and educating investors about the dangers in the penny stock market. In order to enhance the effort, coordination and information sharing with other law enforcement agencies were identified as high priorities.

Regarding regulatory solutions, the task force has made significant headway in the proposed rulemaking area. It is formulating several regulations designed to attack problems in both the disclosure and marketing areas. One of these proposals, Rule 15c2-6, 3/ has already been published for public comment and other proposals will be considered by the Commission in the near future.

The Commission also has initiated a program to warn unsophisticated investors. This educational effort was begun with the distribution of a flyer alerting potential investors

3/ Release No. 34-26529 (February 8, 1989) [54 FR 6693].

to penny stock fraud problems. ^{4/} The Commission's Regional Administrators have sought the assistance of banks and utility companies in their localities, asking them to include the flyer with their monthly billing or income statements. Also, the Commission's Director of Public Affairs has written various publications -- particularly those directed at elderly persons who are frequently victims of this fraud -- asking them for assistance in publicizing the problems of penny stock fraud.

The Penny Stock Task Force has met with various NASAA representatives and others to pursue cooperative efforts. A fine example of interagency cooperation exists in South Florida, where the Commission's Miami Branch Office has been working actively with the Florida Comptroller's Office, the NASD, the FBI, and the IRS. Similar efforts are underway in other areas of the country with the Commission's Regional Offices providing the coordination.

I understand that a number of enforcement referrals and recommendations have been developed by the staff since the Commission decided to mobilize its resources against abuses which exist in the penny stock market. A cooperative effort at both the federal and state levels will have an even stronger and beneficial impact in this regard.

^{4/} See Beware of Penny Stock Fraud! Information For Investors, U.S. Securities and Exchange Commission (November 1988).

III. EDGAR

As you undoubtedly know, since our last gathering, the contract for the Commission's EDGAR, or Electronic Data Gathering, Analysis and Retrieval System, has finally been awarded. Representatives of NASAA and the Commission have worked together very diligently over the past several years to lay the foundation for giving state securities regulators access to EDGAR electronic filings. This cooperative effort will continue as EDGAR becomes fully operational, with a future goal of "one-stop filing." Although many obstacles remain before "one-stop filing" is a reality, the development of Operational EDGAR will permit state-related filings to be identified and routed to the states via an EDGAR-compatible facility at NASAA, assuming that uniform filing requirements can be agreed upon. The state securities regulators also will have access to EDGAR's electronic bulletin board for advising filers regarding the status of their state filings. In addition, EDGAR will permit state regulators to perform limited filing retrievals and word searches against the EDGAR data base. As development of the system proceeds, the Commission will continue to work with NASAA and the states to achieve "one-stop filing" within the United States.

IV. Investment Management

In the area of investment management, much has been accomplished through NASAA/SEC cooperation in line with three important resolutions adopted at this conference last year. ^{5/}

First, we resolved to work to simplify the forms and procedures used by investment companies to register their securities offerings -- with the near-utopian goal of a single registration and disclosure form to be used in any state and with the SEC. I understand that NASAA representatives and our staff have met a number of times about this issue and that it is on your agenda today. I encourage you all in these efforts. Uniformity in filing requirements will aid both the regulators and the regulated.

A second resolution last year was to work toward a central registration system for investment advisers. It is apparent that there are a number of complex issues that must be resolved before this idea reaches fruition. Nonetheless, the cooperative efforts must be continued. A "one-stop filing" procedure for these securities professionals would greatly decrease their regulatory burdens and could be significantly cost effective for regulators.

A third resolution, which certainly complements the previous one, was the development of a uniform method for updating and renewing investment adviser registration. I

^{5/} See Final Report, NASAA/SEC 1988 Conference on Federal-State Securities Regulation at 3 (August 1988).

understand that a good deal of work has been directed toward this result and your discussions are continuing.

One issue that will be addressed by the Commission this year is the proposal to exempt small investment advisers from federal registration if they are registered in the states where they do business. These proposals were the product of discussions between Commission staff and state regulators at last year's conference. The Commission proposed these rules last September and has received some twenty comment letters. 6/ The comments have been mixed and we will be taking a hard look at them. I note in this regard that the NASAA position was supportive of the proposal.

Another important issue to be considered by all of us is whether the Commission should seek legislation for the establishment of a self-regulatory organization for investment advisers. The Commission staff is in the process of evaluating this suggestion with a view to making recommendations to the Commission within the next few months.

V. Market Regulation

In the area of market regulation, a continuing point of interest and discussion has been the central registration depository for broker-dealers. This system offers substantial benefits through the potential elimination of duplicative

6/ Advisers Act Release No. 1140 (September 16, 1988) [53 FR 36997].

effort and unnecessary expense to persons subject to our regulations. The Commission has requested funding for fiscal year 1990 in order to bring the federal requirements into the system. With the Commission as a full-fledged participant, this system could become the first example of total uniformity of regulatory processing at the federal and state levels. This would be a wonderful achievement attesting to the success of our cooperative efforts.

A significant accomplishment since your last conference was our joint decision to work on developing exemptive standards from registration requirements for NASDAQ/NMS securities, which would be comparable to the standards presently in place for exchange-listed securities. I understand that within the past month, Arkansas, Mississippi, Nebraska, and Massachusetts have acted to provide such an exemption, bringing the total to 25 states thus far that recognize NASDAQ/NMS securities for exemptive purposes. 7/ I look forward to continuing effective action in this area in the future.

VI. Corporation Finance

Last year, I suggested to you that much could still be accomplished in furtherance of the ULOE-Regulation D partnership. As I recall, the Commission had at that time recently proposed for public consideration amendments to

7/ Wall Street Journal, April 10, 1989 at 6.

Regulation D concerning "substantial and good faith compliance." 8/ I asked for your considered views, and NASAA and 15 state administrators responded. It was in no small part due to this expression of your concern that last summer I asked our Corporation Finance staff to join forces with representatives from NASAA and leaders from the American Bar Association to formulate a solution which could accommodate the legitimate needs of persons doing Regulation D offerings, while at the same time meeting your concerns. Rule 508 and its companion amendments are the result of those efforts. Reaction to this product was most satisfying -- amendments to Regulation D were endorsed by you and adopted by the Commission. 9/ I understand that additional amendments to the ULOE policy statement which follow the theme of substantial compliance also may be considered by you at your spring meeting which starts tomorrow.

Another matter which I understand your membership will be taking under consideration is the Uniform Limited Offering Registration or ULOR project sponsored by the ABA. 10/ It is easy to see that one registration format for offerings exempt at the federal level would go a long way to aid small issuers in raising capital and to minimize regulatory burdens. I

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

9/ Release No. 33-6825 (March 14, 1989) [54 FR 11369].

10/ See Harris, Keller, Stakias & Liles, Financing the "American Dream": A Beginning, 44 Bus. Law. 625 (1989).

understand that the sample prospectus, developed by ABA committees with advice from several of the NASAA committees, is regarded as providing necessary and important investor disclosure protections. I know that the NASAA membership will give this matter their careful consideration and I look forward to learning about the result of the deliberations.

One area where we can still achieve unifying results is the adoption of the ULOE policy statement 11/ in the few states which have not as yet adopted it, Regulation D, or some coordinating counterpart. I encourage those states to consider this important matter, either by recommending the necessary legislation or adopting appropriate administrative regulations.

VII. Internationalization of the Securities Markets

On the international front, this past year has featured continued improvements in cooperation between securities regulators around the world. We must build on this cooperative spirit as we seek coordinated international solutions to world market problems. Last November, the Commission issued a Policy Statement on Regulation of International Securities Markets that sets forth principles and goals the Commission considers to be central in achieving a truly global system. 12/ The Commission noted that, in seeking solutions to common

11/ CCH NASAA Rep. ¶ 6201 at 6101.

12/ International Series Release No. 1, 43 SEC Docket 128 (November 1988).

problems, securities regulators should be sensitive to cultural differences and national sovereignty concerns, respecting existing national regulatory frameworks. I am very pleased to note that, in its comment letter, NASAA expressed strong support for the principles and goals enunciated in the Policy Statement. Among their comments, NASAA noted that "... the SEC Policy Statement looks forward and probes deeply into the multi-faceted regulatory issues involved in the logical next step: the evolution of a continuously trading and active international securities market consisting of various national/regional segments.... NASAA ... recognizes that certain accommodations will have to be made amongst all regulators to facilitate capital formation in an international securities market [and] endorses the SEC's call for wider and more frequent cooperation among securities regulators on enforcement matters...." ^{13/} Indeed, I understand that the NASAA membership will be considering issuance of a policy statement in this area.

VIII. Conclusion

The past year has shown a strong spirit of cooperation between NASAA and the Commission. There are many important challenges for us to face as securities regulators. If the spirit of state and federal cooperation continues, there is every

^{13/} Letter dated January 19, 1989 from John Baldwin to Jonathan Katz, contained in Commission File No. S7-25-88.