

NEWS

**SECURITIES AND
EXCHANGE COMMISSION**

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REMARKS TO
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**U.S. SECURITIES AND
EXCHANGE COMMISSION**

"THE QUEST FOR ACCOUNTABILITY"

By
ROBERTA S. KARMEL, COMMISSIONER
SECURITIES AND EXCHANGE COMMISSION

1.

SINCE I BECAME A COMMISSIONER OF THE SECURITIES AND EXCHANGE COMMISSION, THE SEC HAS BEEN INVOLVED IN TWO QUESTS FOR ACCOUNTABILITY. ON THE ONE HAND, IT HAS BEEN DEMANDING INCREASED ACCOUNTABILITY FROM PUBLIC CORPORATIONS. ON THE OTHER HAND, THE COMMISSION HAS BEEN THE OBJECT OF DEMANDS FOR GREATER ACCOUNTABILITY IN GOVERNMENT. I BELIEVE THAT THESE QUESTS FOR ACCOUNTABILITY ARE RELATED AND THAT THEIR JOINDER MAY USHER IN A NEW ERA IN GOVERNMENT REGULATION OF BUSINESS.

TO BE ACCOUNTABLE IS TO BE ANSWERABLE AND TO BE HELD TO SOME STANDARD. SOMETIMES ACCOUNTABILITY IS INVOKED AS AN END IN ITSELF. I BELIEVE THIS IS A MISTAKE. ACCOUNTABILITY SHOULD BE PURSUED AS A MECHANISM TO ATTAIN CERTAIN OBJECTIVES AND TO AVOID ARBITRARY ACTION. THE ULTIMATE PURPOSE TO BE SERVED BY IMPROVED ACCOUNTABILITY IS SOUND AND CORRECT DECISION-MAKING.

INSTITUTIONS ARE GIVEN POWER AND AUTHORITY TO ACHIEVE DESIRED GOALS. AT THE SAME TIME, THEY ARE LIMITED BY REQUIREMENTS OF ACCOUNTABILITY. INSTITUTIONAL ACCOUNTABILITY, THEN, IS A MECHANISM TO BETTER RESPOND TO THE NEEDS OF THOSE INSTITUTIONS SERVE.

GOVERNMENT AGENCIES AND PUBLIC CORPORATIONS DO NOT SERVE PRECISELY THE SAME CONSTITUTENCIES. GOVERNMENT IS ANSWERABLE TO THE CITIZENRY, AND MORE SPECIFICALLY, THE ELECTORATE. CORPORATIONS ARE ANSWERABLE TO THEIR SHAREHOLDERS, EMPLOYEES AND CUSTOMERS.

YET IN OUR MASS SOCIETY, THERE IS A GROWING IMPATIENCE WITH TRADITIONAL MECHANISMS FOR ACCOUNTABILITY. THE INCREASING NUMBER AND COMPLEXITY OF DOMESTIC AND INTERNATIONAL PROBLEMS WHICH HAVE NO DEFINITIVE, OR OBVIOUS SOLUTION, HAS PUT A GREAT STRAIN ON OUR ECONOMIC AND SOCIAL INSTITUTIONS. SINCE THESE INSTITUTIONS ARE PERCEIVED AS INEFFECTIVE, OR WORSE, AS CONTRIBUTING TO THE COMPLEX PROBLEMS WE FACE, THEY ARE LOSING THE CONFIDENCE OF THEIR CONSTITUENCIES.

AMERICANS ARE CONFRONTED BY 13% INFLATION, A STAGNANT ECONOMY, UNACCEPTABLE RATES OF UNEMPLOYMENT, A SERIOUS ENERGY CRISIS, AND AN UNSTABLE WORLD COMMUNITY. FURTHER, NAGGING QUESTIONS PERSIST WITH REGARD TO FAIRNESS IN THE DISTRIBUTION OF RESOURCES WHICH EXACERBATE SOCIAL AND POLITICAL TENSIONS. IT IS NO WONDER THE GENERAL PUBLIC IS QUESTIONING THE CREDIBILITY OF OUR INSTITUTIONS. THE POPULARITY OF THE PROPOSITION SYSTEM OF DECISION-MAKING IN CALIFORNIA IS BUT ONE EXAMPLE OF THE TREND TOWARD DIRECT ACCOUNTABILITY.

IT IS INCREASINGLY DIFFICULT FOR INSTITUTIONS IN BOTH THE PUBLIC AND PRIVATE SECTOR TO MAINTAIN AND DEFEND THEIR

LEGITIMACY THROUGH TRADITIONAL LEGAL MECHANISMS. INSTITUTIONAL AUTHORITY, WHICH USED TO BE TAKEN FOR GRANTED, IS NOW OPEN TO QUESTION.

I SEE BOTH DANGER AND OPPORTUNITY IN THE ENSUING QUEST FOR ACCOUNTABILITY. IN SOME RESPECTS THIS QUEST IS NOVEL BECAUSE BUSINESS AND GOVERNMENT ARE IN SOME NEW WAYS JOINING HANDS IN ORDER TO DEFEND INSTITUTIONALIZED AUTHORITY AGAINST DIRECT MASS DECISION-MAKING. THIS TASK WILL NOT BE EASY.

BOTH PUBLIC AND PRIVATE INSTITUTIONS CREATED OVER THE YEARS TO BUILD AND MAINTAIN A STRONG ECONOMY AND SOCIETY, HAVE SIMPLY NOT PERFORMED AS EXPECTED IN RESPONSE TO THE MYRIAD OF ILLS AFFECTING THE U.S. TODAY. I HOPE THIS IS NOT INDICATIVE OF SOME INHERENT LIMITATIONS OF OUR INSTITUTIONS, BUT RATHER, BECAUSE OF THE FAILURE OF TRADITIONAL MECHANISMS OF ACCOUNTABILITY TO WORK. I HOPE THAT OUR DEMOCRATIC INSTITUTIONS ARE NOT OUT OF CONTROL, BUT RATHER THAT THEY ARE SIMPLY NOT REACHING INTENDED GOALS OF OUR SOCIETY BECAUSE THEY ARE NOT BEING HELD ADEQUATELY ACCOUNTABLE.

BOTH GOVERNMENT AND BUSINESS INSTITUTIONS ARE TO BE FAULTED FOR ANY SUCH BREAKDOWN IN THE MECHANISMS FOR RESPONSE, RESPONSIBILITY, AND ACCOUNTABILITY. INFLATION, ENERGY AND UNEMPLOYMENT ARE EVERYONE'S PROBLEMS, AND WE MUST LOOK TO BOTH GOVERNMENT AND BUSINESS FOR SOLUTIONS.

BUSINESS PROVIDES THE GOODS, SERVICES AND JOBS WHICH ARE REQUIRED FOR THE ECONOMIC WELL-BEING OF THE NATION. ALTHOUGH BUSINESS EXISTS TO SERVE A PRIVATE PURPOSE, THE CORPORATION, WHICH IS THE PRIMARY INSTITUTION OF BUSINESS, IS A CREATION OF THE GOVERNMENT. THEREFORE, IT MUST RESPOND TO GOVERNMENT DIRECTION, AND PERFORM THE FUNCTIONS WHICH THE PEOPLE, THROUGH THE GOVERNMENT, ASSIGN TO IT. OF LATE, THERE IS SOME QUESTION WHETHER THE ECONOMIC FUNCTION OF THE CORPORATION HAS BEEN WELL SERVED. PRODUCTIVITY AND INNOVATION ARE AT UNACCEPTABLY LOW LEVELS. CAPITAL ASSETS NEED REPLACEMENT AND MODERNIZATION TO AN EXTENT BUSINESSMEN SEEM RELUCTANT TO ACKNOWLEDGE. AS A RESULT, THE U.S. IS INCREASINGLY UNABLE TO COMPETE IN INTERNATIONAL TRADE.

ONE HAS ONLY TO LOOK AT THE DEPRESSED STATE OF THE U.S. STEEL AND AUTOMOBILE INDUSTRIES FOR EXAMPLES. THE INABILITY OF OUR BIGGEST CORPORATIONS TO COMPETE WITH FOREIGN COMPANIES IN THESE INDUSTRIES HAS NOT SERVED THE NEEDS AND EXPECTATIONS OF THE SHAREHOLDERS, INVESTORS, EMPLOYEES OR CUSTOMERS OF THOSE CORPORATIONS. MANY BUSINESS DECISIONS HAVE BEEN SHORTSIGHTED AND ILL-CONCEIVED WITH LITTLE SENSITIVITY BY BUSINESSMEN TO THEIR RESPONSIBILITY OR ACCOUNTABILITY FOR LONG TERM FAILURES.

IT IS VERY DISTRESSING THAT THE TRADITIONAL MECHANISMS FOR BUSINESS ACCOUNTABILITY -- SHAREHOLDER VOTE, GOVERNMENT REGULATION, AND BALANCE SHEET RESULTS -- HAVE NOT BEEN MORE

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EFFECTIVE IN FORCING BUSINESS TO APPRECIATE AND PROPERLY RESPOND TO POLITICAL, SOCIAL, AND ABOVE ALL, ECONOMIC PROBLEMS. THE UNFORTUNATE RESULT IS THAT BUSINESS CONSTITUENCIES AND THE PUBLIC GENERALLY HAVE LOST FAITH THAT BUSINESS - THROUGH ITS INSTITUTIONS - CAN STILL ADEQUATELY PERFORM THE FUNCTIONS SOCIETY EXPECTS OF IT. THIS IS REFLECTED, IT SEEMS, IN A 1978 YANKELOVICH NATIONAL SURVEY OF PUBLIC ATTITUDES TOWARD BUSINESS IN AMERICA. ONLY 15% OF THOSE POLLED REGARDED CORPORATE EXECUTIVES AS "VERY CREDIBLE," WHILE 36% CONSIDERED THEM "NOT CREDIBLE."

MORE THAN BUSINESS, GOVERNMENT MUST BE FAULTED FOR THE FAILURES WHICH HAUNT US TODAY. IN THE FINAL ANALYSIS, THE PEOPLE HAVE ENTRUSTED THE GOVERNMENT WITH THE AUTHORITY AND RESPONSIBILITY TO FIND AND ENFORCE SOLUTIONS TO NATION-WIDE PROBLEMS. HOWEVER, BOTH INACTION AND OVER REACTION HAVE BEEN CHARACTERISTIC OF GOVERNMENT PROGRAMS AND REGULATORY POLICIES WHICH HAVE RENDERED PUBLIC INSTITUTIONS SEEMINGLY INEFFECTIVE. THAT IS, GOVERNMENT HAS CONTRIBUTED TO, RATHER THAN SOLVED ECONOMIC AND SOCIAL PROBLEMS. THE STATE OF THE AUTOMOBILE AND STEEL INDUSTRIES CAN BE LAID AT THE DOORSTEP OF THE FEDERAL GOVERNMENT AS WELL AS THAT OF BIG BUSINESS. GOVERNMENT SPENDING AND OVERREGULATION ARE MEASURABLE CONTRIBUTORS

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TO THE 13% INFLATION RATE WHICH DESTROYS EARNINGS. TAX POLICY WHICH IGNORES CAPITAL FORMATION AND INNOVATION ALSO GENERATES UNEMPLOYMENT AND RENDERS INDUSTRIAL PLANTS OBSOLETE. SHORTSIGHTEDNESS IN PROBLEM-SOLVING AFFECTS GOVERNMENT AS WELL AS BUSINESS.

MOREOVER, PUBLIC REPRESENTATIVES HAVE RAISED EXPECTATIONS AND MADE PROMISES THAT OUR PUBLIC INSTITUTIONS ARE NOT KEEPING. "THERE OUGHT TO BE A LAW" HAS PROVEN A GOOD RESPONSE TO FEWER AND FEWER PROBLEMS, BUT THE GOVERNMENT CONTINUES TO RESPOND TO CRISIS BY REGULATORY LEGISLATION. THE CONCERNS AND ISSUES OF A WEALTHY SOCIETY HAVE BEEN STRIPPED OF THEIR RELEVANCE BY THE CRACKS IN ITS ECONOMIC FOUNDATION, BUT DEBATE ABOUT TANGENTIAL ISSUES CONTINUES.

THE TRADITIONAL MECHANISMS OF ACCOUNTABILITY FOR GOVERNMENT DO NOT SEEM TO BE WORKING ANY BETTER THAN ACCOUNTABILITY FOR BUSINESS. THE CHECKS AND BALANCES OF THE FEDERAL GOVERNMENT HAVE BECOME EXCEEDINGLY COMPLEX AND FRUSTRATING FOR EVERYONE. THE BALLOT BOX, AS A DIRECT ACCOUNTABILITY MECHANISM, HAS PROVEN RATHER INEFFECTUAL. THERE IS A COMMON PUBLIC PERCEPTION THAT NOTHING CAN BE DONE TO EFFECT MEANINGFUL CHANGE.

THE FEDERAL GOVERNMENT HAS BECOME SO BIG AND UNWIELDY THAT SOME SUGGEST IT IS TOTALLY OUT OF CONTROL. WHEN FORMER

7.

ATTORNEY GENERAL BELL STATES THAT THE PRESIDENT HIMSELF IS SIMPLY NO MATCH FOR THE FEDERAL BUREAUCRACY, SOMETHING IS WRONG.

THE FEDERAL REGULATORY AGENCIES, INCREASINGLY COMPOSED OF YOUNG PROFESSIONALS AND CAREER BUREAUCRATS CONFRONT THE BUSINESS WORLD WITH GOOD INTENTIONS BUT NOT ALWAYS WITH UNDERSTANDING BASED ON EXPERIENCE WITH THE DYNAMICS OF PROFIT-MAKING ENTERPRISE. TECHNOLOGICAL AND ECONOMIC DEVELOPMENTS HAVE MADE MANY REGULATORY SCHEMES EMBEDDED IN OUT-DATED STATUTES IRRELEVANT OR EVEN COUNTERPRODUCTIVE. ELECTED OFFICIALS TOO FREQUENTLY FAIL TO UPDATE OR SPECIFY THE OBJECTIVES OF REGULATORY PROGRAMS OR HOW THEY SHOULD BE IMPLEMENTED. GOVERNMENT INSTITUTIONS, THUS, LOSE THE FLEXIBILITY TO CHANGE AND ADDRESS NEW CONDITIONS. OFTEN THIS HAPPENS BECAUSE THERE IS NO NATIONAL CONSENSUS ON HOW TO SOLVE THE COUNTRY'S PROBLEMS. THESE AND OTHER FORCES HAVE RESULTED IN TOO MUCH GOVERNMENT HOSTILITY TOWARD BUSINESS AS A MATTER OF PRINCIPLE AND WITHOUT ANY PARTICULAR PURPOSE.

THOUGH I CRITICIZE OUR PUBLIC AND PRIVATE INSTITUTIONS FOR THEIR FAILURES IN PERFORMANCE AND FOR THE INADEQUACIES OF TRADITIONAL ACCOUNTABILITY MECHANISMS, IT IS EXACTLY THOSE INSTITUTIONS WHICH I BELIEVE MUST BE STRENGTHENED AND COMMAND GREATER PUBLIC RESPECT. IT IS BUSINESS

ORGANIZATIONS AND GOVERNMENT BODIES WORKING EFFECTIVELY WHICH STILL HOLD THE PROMISE TO SATISFACTORILY MEET THE NEEDS OF THEIR CONSTITUENCIES. I HOPE THIS CAN BE ACHIEVED THROUGH ENHANCED ACCOUNTABILITY MECHANISMS, AS WELL AS HONEST, INTELLIGENT AND PRINCIPLED LEADERSHIP.

MANY NOTIONS ABOUND ABOUT HOW TO MAKE CORPORATIONS MORE ACCOUNTABLE. ALTHOUGH SOME PRESCRIPTIONS GEARED DIRECTLY TO THE CORPORATION'S CONSTITUENCIES - SHAREHOLDERS, INVESTORS, EMPLOYEES, AND CUSTOMERS - OTHERS GO WELL BEYOND AND WOULD REQUIRE THE CORPORATION TO SERVE A GREATER PUBLIC PURPOSE THAN WHAT IT NOW HAS. THESE MEASURES, FOR EXAMPLE FEDERAL CHARTERING OF CORPORATIONS, ARE OFTEN RATIONALIZED ON THE BASIS OF THE SUBSTANTIAL POWER OVER AND IMPACT UPON OUR SOCIETY CORPORATIONS HAVE. BUT WHETHER AND TO WHAT EXTENT ANY PRIVATE INSTITUTION IS IMBUED WITH A PUBLIC FUNCTION AND RESPONSIBILITY IS A POLITICAL QUESTION. I BELIEVE THAT IT IS GOVERNMENT'S OBLIGATION, THROUGH THE POLITICAL PROCESS, TO DECIDE WHETHER PUBLIC OBLIGATIONS AND RESPONSIBILITIES SHOULD BE IMPOSED ON THE CORPORATION BEYOND THOSE ALREADY IN PLACE FOR THE BENEFIT OF ITS TRADITIONAL CONSTITUENCIES.

AS FOR GOVERNMENT, THERE HAVE BEEN NUMEROUS INITIATIVES TO BRING IT UNDER CONTROL AND MAKE IT RESPONSIVE TO CITIZENS. THE FREEDOM OF INFORMATION, PRIVACY AND GOVERNMENT IN THE SUNSHINE ACTS CAN ALL BE VIEWED AS ACCOUNTABILITY MEASURES TO HOLD GOVERNMENT TO TASK IN ITS EVERYDAY OPERATIONS. MUCH MORE SIGNIFICANT TODAY, HOWEVER, ARE THE MANY REGULATORY REFORM BILLS FLOATING IN THE HALLS OF CONGRESS. THESE PROPOSED LEGISLATIVE MEASURES INCLUDE LEGISLATIVE VETO, PRESIDENTIAL VETO, SUNSET, SUNRISE, HIGH-NOON, AND COST BENEFIT ANALYSIS. THESE BILLS WOULD IMPOSE SUBSTANTIAL NEW BURDENS ON REGULATORY AGENCIES TO JUSTIFY THE ADOPTION OF NEW RULES AND REGULATIONS AND WOULD REQUIRE A PERIODIC REVIEW OF EXISTING RULES FOR CONTINUED VALIDITY. MANY FEEL THAT ONLY THROUGH RATHER HARSH MEASURES LIKE THESE, WILL REGULATORY AGENCIES BECOME CONTROLLABLE AND ACCOUNTABLE.

I BELIEVE THAT THESE CURRENT ACCOUNTABILITY PROPOSALS FOR BOTH THE CORPORATION AND THE GOVERNMENT LEAVE A LOT TO BE DESIRED. I DO NOT BELIEVE THEY ARE DESIGNED PRIMARILY TO ENHANCE CONFIDENCE AND TO STRENGTHEN OUR PUBLIC AND PRIVATE INSTITUTIONS. NOR DO I THINK THEY ARE IN ANY WAY ADEQUATE TO DEAL WITH THE MAJOR PROBLEMS FACING OUR SOCIETY TODAY. TRUST AND CONFIDENCE IN OUR INSTITUTIONS COME FIRST AND FOREMOST FROM PERFORMANCE. IT IS OUR INSTITUTIONS WHICH MUST PERFORM BETTER IN ORDER FOR US TO REDUCE INFLATION,

FIND CHEAP FUEL, AND PUT PEOPLE BACK TO WORK. AT THE SAME TIME THEY MUST BE ACCOUNTABLE, BUT NOT AT THE RISK OF IMPAIRING PERFORMANCE.

I ADVOCATE A GREATER APPRECIATION BY GOVERNMENT FOR THE WORK OF THE PRIVATE SECTOR, AND A MORE COOPERATIVE ATTITUDE BETWEEN BUSINESS AND GOVERNMENT. ONLY THROUGH THE COORDINATED AND RESOURCEFUL EFFORTS OF BOTH PRIVATE AND PUBLIC INSTITUTIONS CAN WE BEGIN TO SOLVE DEEP-SEATED ECONOMIC AND SOCIAL PROBLEMS. IN THAT REGARD, I NOTE THAT THE ADMINISTRATION'S REGULATORY COUNCIL, UNDER ORDERS FROM THE PRESIDENT HIMSELF, HAS RECENTLY ORGANIZED AN "AUTOMOBILE COMMITTEE" COMPRISED OF GOVERNMENT AND BUSINESS LEADERS TO FOSTER AUTOMOBILE RESEARCH AND DEVELOPMENT AND TO SET AN OVERALL PLAN FOR AUTOMOBILE REGULATION.

I AM CONCERNED, HOWEVER, THAT THE COMBINED POWER OF BUSINESS AND GOVERNMENT MAY NOT BENEFIT OR BE ACCOUNTABLE TO THE PUBLIC. LOUIS KOHLMEIER HAS MADE A VERY TELLING OBSERVATION IN THIS RESPECT:

IF THOSE TENSIONS AND CONFRONTATIONS [/] BETWEEN GOVERNMENT AND BUSINESS WERE REDUCED TO THE POINT OF ELIMINATION, THEN COOPERATION WOULD ENDANGER THE POLITICAL AND ECONOMIC FREEDOMS FOR WHICH THE SYSTEM EXISTS. 1/

SINCE AT LEAST THE NEW DEAL, WHEN THE SEC AND OTHER SIMILAR AGENCIES WERE CREATED, THE RELATIONSHIP BETWEEN GOVERNMENT AND BUSINESS HAS BEEN BOTH ADVERSARIAL AND

1/ KOHLMEIER, "ODD TIMING FOR BUSINESS TO IDENTIFY WITH GOVERNMENT," III FINANCIER 8 (JULY 1979),

COOPERATIVE. HOWEVER, THE SEC'S REPUTATION AS AN OUTSTANDING AGENCY HAS BEEN EARNED BECAUSE IT HAS BEEN A TOUGH REGULATOR OF BUSINESS -- A POLICEMAN OF WALL STREET AND PUBLIC CORPORATIONS.

NEVERTHELESS, THE PURPOSE FOR ESTABLISHING THE SEC WAS TO INCREASE AND MAINTAIN PUBLIC CONFIDENCE IN THE CAPITAL MARKETS. IN TODAY'S POLITICAL AND ECONOMIC CLIMATE I THINK THAT THE RELATIONSHIP BETWEEN THE COMMISSION AND THE BUSINESS COMMUNITY SHOULD BECOME MORE COOPERATIVE AND LESS ADVERSARIAL IN ORDER FOR THAT BASIC PURPOSE TO BE BETTER SERVED. ENHANCEMENT OF THE CAPITAL RAISING PROCESS IS THE CURRENTLY RELEVANT PUBLIC INTEREST THE COMMISSION WAS DESIGNED TO FOSTER.

THE ECONOMIC WELL BEING OF THE NATION DEPENDS ON BUSINESS GOVERNMENT SHOULD REGULATE BUSINESS IN ORDER TO SUPPORT HONEST ENTERPRISE, PARTICULARLY IN THE CONTEXT OF TODAY'S INTERNATIONALLY COMPETITIVE ECONOMY, AND YET TO PREVENT BUSINESS FROM PURSUING ITS PRIVATE ENDS IN A WAY THAT IS UNDULY DAMAGING TO THE PUBLIC'S HEALTH, SAFETY OR WELFARE.

IN THIS CONTEXT I WISH TO MENTION SOME OF THE SEC'S CURRENT INITIATIVES IN THE AREA OF CORPORATE ACCOUNTABILITY. THE DEBATE BETWEEN THE COMMISSION AND THE BUSINESS COMMUNITY CONCERNING CORPORATE ACCOUNTABILITY HAS BEEN ACRIMONIOUS AND, I FEAR HAS DEFLECTED PUBLIC ATTENTION AWAY FROM THE BASIC ISSUE. I WOULD ARTICULATE THAT ISSUE AS BEING HOW BUSINESS AND GOVERNMENT CAN PERSUADE THE PUBLIC THAT THEY

ARE EFFECTIVELY PURSUING WORTHWHILE ENDS. IT IS THE LEGITIMACY OF THE TRADITIONAL INSTITUTIONS OF AUTHORITY IN OUR SOCIETY WHICH IS REALLY AT STAKE.

WHETHER THERE ARE A MAJORITY OF NON-MANAGEMENT DIRECTORS IN A PARTICULAR CORPORATION MAY OR MAY NOT BE SIGNIFICANT TO THAT CORPORATION, OR AS A GENERAL POLICY MATTER. WHETHER CHANGING THE MECHANISMS FOR VOTING FOR DIRECTORS WILL AFFECT THE BEHAVIOR PATTERNS OF SHAREHOLDERS IS UNKNOWN. BUT DEBATE ON THESE MATTERS SHOULD NOT LOSE SIGHT OF THE LARGER ISSUES CONCERNING THE LEGITIMACY OF CORPORATE POWER AND THE LEGITIMACY OF THE GOVERNMENT REGULATORS OF THAT POWER. WHEN SUCH DEBATE DEGENERATES INTO A LEGALISTIC POWER STRUGGLE, THE PUBLIC IS NOT PERSUADED THAT EITHER SIDE HAS THE PUBLIC INTEREST IN MIND.

I THINK IT IS IMPORTANT FOR THE COMMISSION'S CORPORATE ACCOUNTABILITY PROGRAM TO GO FORWARD IN AN ATMOSPHERE OF RESPECTFUL, CREATIVE TENSION. I RECOGNIZE THAT THIS REQUIRES GREATER EFFORT ON THE SEC'S PART TO UNDERSTAND THE PROBLEMS, INCLUDING COST, WHICH NEW REGULATIONS POSE TO THE CORPORATE COMMUNITY AND TO SHOULD THE BURDEN OF ADEQUATELY JUSTIFYING ANY NEW REGULATIONS. IT ALSO REQUIRES A CLEAR UNDERSTANDING OF THE PURPOSE OF SUCH A PROGRAM.

IN MY MIND THAT PROGRAM IS DESIGNED TO ENHANCE ACCOUNTABILITY OF A PUBLIC CORPORATION TO ITS CONSTITUENCIES - SHAREHOLDERS, INVESTORS, EMPLOYEES, AND CUSTOMERS. IT SHOULD

NOT BE DESIGNED TO MAKE CORPORATIONS PUBLICLY ACCOUNTABLE FOR EVERY SOCIAL ILL AFFLICTING EVERY SEGMENT OF SOCIETY. AS NOTED EARLIER, IF CORPORATIONS ARE TO HAVE SUCH PUBLIC RESPONSIBILITIES, THAT IS A POLITICAL DECISION FOR CONGRESS TO MAKE. IT CERTAINLY IS NOT THE TYPE OF ISSUE TO BE ADDRESSED OR RESOLVED BY AN INDEPENDENT REGULATORY AGENCY CONCERNED WITH INVESTOR AND SHAREHOLDER PROTECTION.

SINCE I HAVE BEEN ON THE COMMISSION, THE SEC'S CORPORATE ACCOUNTABILITY PROGRAM HAS PRODUCED A VARIETY OF PROPOSALS. AS SOME OF YOU MAY KNOW, I WAS TO SOME EXTENT CRITICAL OF SOME OF THESE PROPOSALS, BUT I DID CONCUR IN THOSE RULES THE COMMISSION ACTUALLY ADOPTED. 2/ THESE ARE RULES REQUIRING INCREASED DISCLOSURE OF MANAGEMENT BACKGROUND AND REMUNERATION, AND MODIFICATION OF THE PROCESS OF VOTING BY PROXY,

IN ADDITION, THE COMMISSION HAS PROPOSED RULES ON INTERNAL ACCOUNTING CONTROLS, WHICH HAVE NOT BEEN ADOPTED AS YET. AND THE COMMISSION PUBLISHED FOR COMMENT THE SO-CALLED GEORGETOWN PETITION CONCERNING THE RESPONSIBILITIES OF CORPORATE COUNSEL.

THE COMMISSION'S PROPOSED MANAGEMENT AFFILIATION AND REMUNERATION RULES WERE ISSUED ON JULY 18, 1978, 3/ AS A

2/ I DID DISSENT IN PART TO COMMISSION RULES IMPLEMENTING THE FOREIGN CORRUPT PRACTICES ACT. SEE SECURITIES EXCHANGE ACT REL. No. 15570 (FEB. 15, 1979),

3/ SECURITIES EXCHANGE ACT REL. No. 14970 (JULY 18, 1978). SEE ALSO SECURITIES EXCHANGE ACT REL. Nos. 13901 (AUGUST 29, 1977), AND 13482 (APRIL 28, 1977).

RESULT OF FIVE AND A HALF WEEKS OF PUBLIC HEARINGS HELD IN 1977 AND A PRIOR REQUEST FOR COMMENTS. THE PROPOSED AMENDMENTS PERTAINED TO THE DISCLOSURE OF THE STRUCTURE, COMPOSITION, AND FUNCTIONING OF ISSUERS' BOARDS OF DIRECTORS, AS WELL AS SUCH ITEMS AS DIRECTORS' RESIGNATIONS, THEIR ATTENDANCE AT BOARD MEETINGS, THE VOTING POLICIES OF CERTAIN INSTITUTIONAL SHAREHOLDERS, AND THE TERMS OF SETTLEMENT OF PROXY CONTESTS. THE COMMISSION RECEIVED SEVERAL HUNDRED LETTERS OF COMMENT, RAISING SERIOUS PROBLEMS WITH MANY OF THE PROPOSALS. IN PARTICULAR, COMMENTATORS OBJECTED TO A PROPOSAL WHICH WOULD HAVE REQUIRED THE LABELLING OF DIRECTORS AS INDEPENDENT OR AFFILIATED.

AS A RESULT, THE COMMISSION EVENTUALLY ISSUED RULES WHICH SIGNIFICANTLY DIFFERED FROM THE ORIGINAL PROPOSALS ON THE LABELLING QUESTION. ^{4/} THE ADOPTED RULES REQUIRE DISCLOSURE CONCERNING DIRECTOR RESIGNATIONS RESULTING FROM POLICY DISPUTES, AN ACCOUNTING AS TO SUBSTANTIAL ABSENTEEISM, A DESCRIPTION OF THE STRUCTURE OF CERTAIN BOARD COMMITTEES, AND A DESCRIPTION OF ECONOMIC AND OTHER RELATIONSHIPS BETWEEN DIRECTORS AND THEIR CORPORATIONS.

THE ADOPTION OF RULES REGARDING DISCLOSURE OF BOARD ACTIVITIES WAS ONLY THE FIRST OF THE MATTERS ORIGINALLY PROPOSED UNDER THE HEADING OF CORPORATE GOVERNANCE.

^{4/} SECURITIES EXCHANGE ACT REL. No. 15384 (DECEMBER 6, 1978).

THE SECOND, SHAREHOLDER COMMUNICATIONS, WAS THE SUBJECT OF A RULE PROPOSAL PUBLISHED ON AUGUST 13, 1979. 5/ THE PROPOSAL WOULD HAVE REQUIRED THE PROVISION OF A PROXY CARD INDICATING ON WHOSE BEHALF THE PROXIES ARE SOLICITED, PERMITTING INDIVIDUAL VOTES ON DIRECTORS, AND WITHHOLDING DISCRETIONARY AUTHORITY TO VOTE SIGNED BUT OTHERWISE BLANK PROXIES. IN ADDITION, THE PROPOSAL SUGGESTED DISCLOSURE OF THE ACTUAL NUMBERS OF VOTES CAST FOR EACH INCUMBENT DIRECTOR, EXCLUSION OF CERTAIN INVESTMENT ADVICE FROM REPORTING REQUIREMENTS, AND DISCLOSURE OF A DEADLINE FOR SHAREHOLDER PROPOSALS. THIS PROPOSAL RECEIVED OVER SIX HUNDRED COMMENTS. THE MAJORITY OF THE COMMENTS ARGUED THAT THE PROPOSED RULES WOULD BE EXTREMELY EXPENSIVE AND MIGHT INVALIDATE CERTAIN CORPORATE ACTION UNDER STATE LAW.

ON NOVEMBER 20, 1979, THE COMMISSION ADOPTED RULES 6/ WHICH REFLECTED THE COMMENTATORS' CONCERNS BY REQUIRING THE USE OF PROXY CARDS WHICH ALLOW, IN SOME OPTIONAL FASHION, THE POSSIBILITY OF SHAREHOLDER ABSTENTION ON A SPECIFIC ISSUE OR SPECIFIC NOMINEE, WITHOUT REQUIRING EXPENSIVE CHANGES IN TABULATING PROCESSES OR CAUSING DIFFICULTIES FOR ISSUERS UNDER STATE LAW.

5/ SECURITIES EXCHANGE ACT REL. No. 16104 (AUGUST 13, 1979).

6/ SECURITIES EXCHANGE ACT REL. No. 16356 (NOV. 21, 1979).

THE MOST CURRENT ASPECT OF THE COMMISSION'S CORPORATE ACCOUNTABILITY PROGRAM IS NOT STRICTLY SPEAKING A PART OF THAT PROGRAM, BUT RATHER IS AN EFFORT TO IMPLEMENT THE FOREIGN CORRUPT PRACTICES ACT. I AM REFERRING TO THE INTERNAL ACCOUNTING CONTROLS PROPOSAL. ON APRIL 30, 1979, THE COMMISSION PROPOSED RULES WHICH WOULD REQUIRE A STATEMENT OF MANAGEMENT ON INTERNAL ACCOUNTING CONTROL IN ANNUAL REPORTS PREPARED OR PROVIDED PURSUANT TO THE SECURITIES LAWS. Z/

THIS PROPOSAL WAS THE MOST CONTROVERSIAL OF THE THREE I HAVE DISCUSSED, RECEIVING NEARLY 950 COMMENTS DURING THE COMMENT PERIOD. OF THOSE COMMENTS, MORE THAN 90% OPPOSED THE PROPOSED RULES AND REQUESTED THEIR WITHDRAWAL. NEARLY ALL COMMENTATORS OPPOSED THE PROPOSAL WHICH WOULD REQUIRE EXAMINATION AND REPORTING OF INTERNAL ACCOUNTING BY AN INDEPENDENT ACCOUNTANT, PRIMARILY ON THE BASIS OF COST. IN ADDITION, A MAJORITY OF THE COMMENTATORS QUESTIONED THE COMMISSION'S AUTHORITY TO ADOPT THE PROPOSED RULES AND THE NEED FOR ANY RULES SUCH AS THOSE PROPOSED.

PARTIALLY AS A RESULT OF THE BREADTH AND COMPLEXITY OF THE COMMENTS RECEIVED ON ITS PROPOSAL, THE COMMISSION RECENTLY ANNOUNCED THAT IT WOULD BE UNABLE TO ADOPT FINAL RULES ON INTERNAL ACCOUNTING CONTROLS DURING THE 1979 CALENDAR YEAR. 8/

Z/ SECURITIES EXCHANGE ACT REL. No. 15772 (APRIL 30, 1979).

8/ SEC NEWS DIGEST P. 1 (NOV. 26, 1979).

THE NEXT PHASE OF THE COMMISSION'S CORPORATE ACCOUNTABILITY PROGRAM WILL BE A STAFF REPORT, RECOMMENDING FURTHER INITIATIVES THE COMMISSION SHOULD CONSIDER TAKING BASED ON THE RECORD COMPILED TO DATE AND THE EFFECTS OF THE RULES ALREADY ADOPTED. THAT STAFF REPORT SHOULD BE PUBLISHED THIS SPRING AND WILL ADDRESS THE NEED, IF ANY, FOR FURTHER LEGISLATION IN LIGHT OF THE POLITICAL QUESTIONS INVOLVED.

FINALLY, THE COMMISSION WILL CONSIDER WHAT TO DO ABOUT THE SO-CALLED GEORGETOWN PROPOSALS. 9/ AS YOU MAY BE AWARE, A PUBLIC INTEREST GROUP AFFILIATED WITH GEORGETOWN UNIVERSITY LAW SCHOOL PETITIONED THE COMMISSION TO PROPOSE CERTAIN RULES FOR PUBLIC COMMENT WHICH, IF ADOPTED, WOULD IMPOSE SIGNIFICANT NEW OBLIGATIONS ON CORPORATE COUNSEL. SPECIFICALLY, THE PROPOSALS WOULD ALTER THE RELATIONSHIP OF CORPORATE COUNSEL TO THE BOARD OF DIRECTORS OF THE CORPORATION. I DISSENTED FROM THE COMMISSION DECISION TO PUBLISH THIS PETITION IN PART BECAUSE I BELIEVE THOSE RULES WOULD REQUIRE A LAWYER TO SECOND-GUESS THE MANAGEMENT AND BOARD OF DIRECTORS OF A CORPORATION AND THEREBY UNDERMINE THE AUTHORITY AND CREDIBILITY OF THE CORPORATION AS A PRIVATE INSTITUTION. RATHER THAN ENHANCING CORPORATE ACCOUNTABILITY, THE RULES SET FORTH IN THE GEORGETOWN PETITION WOULD, IN MY OPINION, CALL INTO QUESTION THE RESPONSIBILITY OF THE BOARD OF DIRECTORS FOR MAKING AND BEING HELD ACCOUNTABLE FOR CORPORATE DECISIONS.

9/ SECURITIES EXCHANGE ACT RELEASE No. 16045 (JULY 25, 1979).

THE SCOPE, DIRECTION AND SUCCESS OF THE COMMISSION'S CORPORATE ACCOUNTABILITY INITIATIVES ARE PARTLY UP TO PUBLIC ISSUERS AND THEIR SHAREHOLDERS. IF THE SEC'S IDEAS ARE VIEWED AS A CONSTRUCTIVE EFFORT TO ENHANCE THE LEGITIMACY OF CORPORATE POWER, AND IF THE RULES WHICH WE ADOPT IN FACT MAKE CORPORATIONS MORE ACCOUNTABLE BOTH EXTERNALLY AND INTERNALLY, THE PUBLIC INTEREST WILL BE WELL SERVED. HOWEVER, IF THE COMMISSION MAKES RULE PROPOSALS WHICH ARE VAGUE OR IRRELEVANT IN THEIR OBJECTIVES OR OVERLY BURDENSOME IN THEIR EXECUTION, AND THE RESPONSE OF THE REGULATED IS UNTHINKING OPPOSITION, THE QUEST FOR ACCOUNTABILITY BY GOVERNMENT AND BUSINESS IS UNLIKELY TO SUCCEED.

IT IS IMPORTANT TO REMEMBER THAT THE CONGRESS WHICH PASSED THE FEDERAL SECURITIES LAWS BELIEVED IT WAS IMPORTANT FOR THE GOVERNMENT TO EFFECTIVELY REGULATE BUSINESS IN ORDER FOR CAPITALISM TO SURVIVE. ALTHOUGH TODAY'S PROBLEMS ARE DIFFERENT FROM THE PROBLEMS OF THE 1930s, THESE ARE ALSO TROUBLED TIMES IN WHICH PUBLIC CONFIDENCE IN BOTH GOVERNMENT AND BUSINESS IS LOW. IT IS STILL CRUCIAL TO THE SURVIVAL OF THE CAPITALIST SYSTEM FOR THE PUBLIC AND PRIVATE SECTORS TO PROVE TO THE GENERAL PUBLIC THAT THEY CAN WORK TOGETHER, AS WELL AS IN OPPOSITION, TO EFFECTIVELY SOLVE REAL PROBLEMS, AND THAT THEY ARE EACH ACCOUNTABLE.