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Symposium Securities Regulation - Introduction

Manuel F. Cohen

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Introduction

Manuel F. Cohen

The past year has been an historic one for investors. Within that period the Commission forwarded to the Congress the monumental *Report of the Special Study of Securities Markets*, which has kindled the spark for important improvements in investor protection. The *Special Study* provided the basis for the enactment of the Securities Acts Amendments of 1964; it induced a number of significant rule and policy changes by national securities exchanges and the National Association of Securities Dealers; it has led to important changes in the rules of the Securities and Exchange Commission; it produced the reasons for reassessment by organizations ancillary to the securities industry of their own codes of conduct; and it has resulted in unpublicized but nevertheless significant strengthening by securities dealers of their internal organizations and procedures.

THE AUTHOR is the Chairman of the Securities and Exchange Commission.

These developments and the continued growth of the industry have caused a renewed interest by professional and academic publications in the theory and mechanics of the securities markets. I am therefore especially pleased to participate in this symposium, which is a further reflection of that interest.

Securities regulation on the federal level is, of course, a complicated field of law, with roots in the common law as well as in statutes which themselves bear the weight of thirty years of administrative and judicial interpretation. Moreover, the applicable law is not only federal; it exists on a state as well as an international level. But, despite its complexities, securities regulation is no longer the private province of a few specialists. The rapid development of courses on securities regulation in our law schools is a natural corollary to the tremendous growth of public interest in our securities markets. Every lawyer who has clients who produce securities (issuers), distribute them (broker-dealers), or consume them (investors), must acquire more than a passing understanding of the pattern and focus of securities regulation.

The Securities Acts Amendments of 1964 will undoubtedly accelerate even further the broadening of professional interest in securities regulation, since the statute expands to the larger over-the-counter issuers the coverage of the reporting, proxy and insider trading provisions, which had previously been applicable generally only to listed securities. Included among these issuers are foreign corporations whose countries of origin do not provide the heritage of disclosure now so familiar to us in the United States, and whose concepts of accounting and shareholder relations are in some cases quite different from ours. I am pleased that this symposium includes a review of comparative disclosure requirements, and I hope that — for the guidance of the Commission as well as the

bar — similar studies will appear. These studies will aid the Commission in meeting the needs of United States investors in a manner which will accommodate, to the extent practicable and consistent with our statutory responsibilities, the special requirements of foreign issuers.

In this regard, it is appropriate to take note of developments abroad which may have a significant effect on the ease, and therefore the willingness, with which foreign issuers will be able to meet customary disclosure and related requirements in this country. A number of foreign governments, in developing as well as in more fully established countries, have appointed commissions or committees to study their securities markets and controls, and significant progress has recently been made by a number of foreign and international organizations. Just as this country borrowed the disclosure concept from the English Companies Act, so now other countries are borrowing from our practices of providing greater disclosure and control in the distribution and trading of securities.

It is also interesting to note the wide range of subjects covered in the pages that follow in this symposium, ranging from painstaking analysis of technical rules and statutory interpretations to a study of the anti-trust significance of certain industry practices. In this thirtieth anniversary year of the Commission, we are reminded that we must look backward as well as forward, re-examining past solutions to see whether they are appropriate to the demands of today's problems, and whether they provide guidance for solution of the problems of the future. In this process, the contributions of the practicing bar, the law schools, and scholars of the law have been of great significance. The *Special Study* emphasized that under the Securities Exchange Act, self-regulatory bodies in the securities industry — essentially private organizations — are charged with public responsibilities. While the *Special Study* dealt primarily with the activities of the NASD and the stock exchanges, it is important to remember that similar responsibilities are assumed by other groups. The concept of self-regulation was not first developed in the securities acts. It was adapted from activities of the professions to educate their members and to enforce ethical obligations. Members of the bar are quite familiar with such activities, and the voluminous legal literature and the many conferences and courses for practicing lawyers indicate that the legal profession takes these obligations seriously.

In the field of securities law, the bar, combining integrity and far-sightedness with vigorous and able representation of clients, has played a major role in developing the rules, the practices, and the policies which have helped to transform the securities markets into viable economic institutions of significant size and importance. The history of the Commission and the statutes it enforces has from the beginning been intertwined with that of the legal profession and publications like this symposium. I speak for my fellow Commissioners as well as for myself when I say that the Commission, already heavily indebted for past contributions, looks forward to continued assistance during its next thirty years.