Speech by SEC Chairman: Remarks at the SEC Historical Society Major Issues Conference

by

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These remarks reflect solely the personal views of Mr. Pitt, and do not necessarily reflect the views of the Commission, the individual members of the Commission, or its Staff.

Good evening. Let's hope the third time is a charm!

Before being elevated to my current, lofty, status, I understood that the cost of enjoying a wonderful meal, like this one, with bright and interesting colleagues, was the need to sit through some pompous after-dinner speaker's not-so-terribly-fascinating reminiscences or war stories. Frankly, it was a trade off I was never willing to make myself. For that reason, since there are still some of you who have remained, I can honestly say that I am honored to be with you this evening. And, I consider it a privilege to share some thoughts with you.

We stand on the threshold of remarkable changes in our capital markets. If there ever was a time when we could view U.S. Capital Markets as if they existed in a vacuum, that time is long past. We live in a global economy, with global markets, engaged in fierce global competition, with boundaries that are expanding exponentially given the Internet and changing technology.

If there ever was a time when we could view the world solely through the prism of U.S. securities regulation, that time is also long past. Major financial markets operate around the globe, governed by local securities regulators under local rules. No one regulator's experience can, or should, dictate the responses or approaches others take. We can, and must, learn from each other, especially in circumstances where we are attempting to expand the universe of securities traded in our markets; we need to recognize that we in the U.S. will have to make appropriate accommodations to differing

regulatory and accounting standards worldwide.

I wish I could dramatically unveil for you this evening a framework for global regulation in the 21st century - how the global community could regulate the global marketplace and create a veritable seamless web of interconnectedness - with logic that would be obvious to all. Unfortunately, I cannot lay claim to such prophetic vision and, realistically, the forces at work in today's marketplace belie a simple solution or easy fix.

So, even as we discuss these issues, we must not lose sight of our limitations. It reminds me of the trio of revolutionaries sipping coffee in Boston, on the day of the Boston Tea Party. As they sat at a café, a mob filled the street, moving toward the Harbor. The rebels watched with great interest and eventually one said, "We can't just sit and watch. We are their leaders. We must follow them!" This is also the ineluctable fate of regulators. We see ourselves as leaders, but, in fact, we are almost always in the position of following the markets, and trying to catch up.

During the past 70 years, the Securities and Exchange Commission has been guided by certain fundamental regulatory objectives: protecting investors; maintaining market integrity, liquidity and transparency; and promoting capital formation. While our commitment to these principles has not wavered, the means of accomplishing them must change along with markets. Securities regulators around the globe must regularly reexamine the purpose and efficacy of regulation, and the methods chosen to accomplish their goals.

An integral part of this reexamination must be the recognition that every nation's regulatory authority has limits, but the markets we regulate transcend those limits. We must also acknowledge our inherent shortcomings: the changes in our markets are so dynamic that, the more specific the regulatory approach we adopt, the more likely it is to become obsolete -- unless we craft flexible approaches that permit and foster innovative methods of regulation and compliance that are fully capable of evolving with the markets.

Let me take a few minutes to highlight some of the marketplace developments, at home and abroad, that require us to rethink our approaches to regulation. In our national marketplace, a confluence of events has resulted in the blurring of more than just geographic distinctions. The elimination of clear boundaries separating categories of investment intermediaries and types of investment products has created an environment ripe for regulatory inconsistencies, and worse, regulatory arbitrage.

Here in the US, the passage of the groundbreaking Gramm-Leach-Bliley Financial Modernization Act eliminated barriers that traditionally separated U. S. financial industry professionals into discrete regulatory segments. In this regard, we have trailed most of the rest of the world, which seems to have gotten along just fine without the harsh separation we used to impose between commercial and investment banking.

Similarly, the distinctions between banking, insurance, commodity and securities regulation have been shifting. Because of this, the financial services industry has seen firms consolidate, while watching the services these firms offer expand. And, the growth of for-profit electronic trading networks has put a new spin on old issues, like market fragmentation and competition.

At the international level, investors in any nation can now access foreign markets more easily than ever before. This, in turn, has profound implications for an issuer's need to list on foreign markets in order to raise capital there, and on the ability of a regulator to oversee the markets in which its investors operate.

Investors too are, in many ways, very different from investors of days past. Today's investors have new and greater expectations as their investment needs have evolved. The transition from defined benefit retirement plans to defined contribution retirement accounts has brought more investors into our markets and imposed greater demands on these investors to understand investment risk theory, portfolio management and asset allocation.

Recent studies show that roughly one out of every two U.S. households invests in securities. While retail investors today have greater access, via electronic technology, to financial information and execution systems, it is an open question whether these same investors have sufficient training and adequate time to use these tools.

Just as investors' needs are changing, market professionals are rethinking and reinventing the services they provide, their role and their compensation structure. For example, a proposed Commission rule would permit brokers who provide portfolio advice to receive asset-based compensation rather than commissions. Brokers and investment advisers are offering financial services that seem more and more alike.

Similarly, collective investment vehicles, like hedge funds, mutual funds and on-line investment portfolios are given very different regulatory treatment although, increasingly, they appear to be providing comparable services to similar types of investors. We must ascertain whether our regulations continue to keep pace with the new and evolving products, changes in the roles played by financial intermediaries, or changes in our markets' structures. If we conclude that they do not, then it is our challenge as regulators to find new approaches to keep pace with innovation and the increasing role of technology.

For this reason, I have already announced that we are rethinking our approach to one of the fundamental contributions of the federal securities laws, full and fair disclosure. In my view, we need to supplement the static periodic disclosure model - that has long served investors well, but in today's world results in the delivery of information that is often stale upon arrival, and impenetrable to many of those who receive it.

I believe we need to move toward a dynamic model of current disclosure of unquestionably material information. We need to clarify and sharpen financial disclosure, so that every investor can readily understand a company's true financial picture. In short, we need to come up with an approach that is less burdensome, but more meaningful, than our current system. We must also be frank in recognizing that reconciling the dichotomy between '33 Act and '34 Act disclosure necessarily requires addressing, in an intelligent fashion, the thorny issue of liability standards.

We must also recognize that the issuer population subject to our standards is increasingly a global issuer community. Consider that in 1981 we had 173 foreign companies registered with the SEC. By 1991 that number had increased to 439, and today, by the end of 2001, we expect to reach 1400 foreign companies registered with the SEC.

Although U.S. markets have had success in attracting foreign companies to our public markets, we cannot rest on our laurels. U.S. investors already invest around the globe, and therefore their interests will be best served if foreign companies can be brought into our markets, which offer the protections of fair trading, and full and fair disclosure, by the companies whose securities trade in those markets. We must make it inviting for global businesses to offer and trade their securities in our markets, but without sacrificing necessary investor protections. This is a consistent Commission message, but sometimes it has been obscured, so I want to make it unequivocally clear - we are determined to find a way to make our markets as hospitable as possible to issuers around the world, while adhering to our mandate of investor protection.

We also must note that our past regulatory successes in facilitating the private offering process now compel us to reexamine regulations that are causing seasoned public companies to opt for private offerings over public offerings. Entities raising capital in a private offering have far fewer regulatory hurdles than those that access public markets. We need to ask whether these discrepancies are in keeping with our regulatory objectives. Should we treat new issuers differently from seasoned issuers? Conversely, if we make changes in the public offering process for seasoned issuers, can we foresee how they will then affect the attractiveness of the private offering process? These are just some of the many issues we must face as we move forward.

What is key is that we address these issues and issuers, foreign vs. domestic, public vs. private, seasoned vs. unseasoned, in a comprehensive manner, so that our regulatory fixes do not have unintended consequences. While the area is of enormous importance, the solution we choose should be consistent with our overarching goal - certainly not more regulation, and not necessarily less regulation, but smarter regulation, regulation that allows markets the greatest amount of flexibility to innovate and create while still preserving and meriting investors' confidence.

Not surprisingly, foreign markets also are experiencing dynamic change.

Domestic and foreign investors alike are showing considerable interest in other marketplaces. To put this growth in perspective, consider the following numbers from the Securities Industry Association: U.S. Holdings of foreign securities reached $2.48 trillion by year-end 2000, up 692% from 1991. Foreign holdings of U.S. securities were approximately $4.2 trillion, up 340% over the same period.

Given the sheer size of these numbers, we want to encourage and facilitate access by foreign issuers to our markets. As we embark on our own modernization of our offering and disclosure processes, we will need to consider how any changes we make to our procedures will affect foreign as well as domestic issuers and investors. In this way, we can certainly work to break down all non-essential access barriers to our markets.

At the same time, we must examine and expand the areas in which we can work together with our foreign regulatory counterparts to come to common approaches to address issues of mutual interest. The growth of foreign markets forces us to recognize that the days when we could establish policy without considering the competitive implications of our policies on our markets have long since passed.

Many of our efforts to date in the international realm have involved working with foreign regulators in a systematic and coordinated way to craft comprehensive policies that make sense for us all. Regulators around the globe have worked cooperatively to forge excellent working relationships. These relationships have proven invaluable, but they need to be expanded to cover the entire gamut of securities regulation and capital raising.

Similarly, we are inspired and encouraged by all of the cooperative efforts aimed at crafting high quality international accounting standards. While work remains to be done, we are certainly well on the road toward creating the type of standards in which investors can have confidence. Looking into the future, we also must appreciate that compatible core accounting standards will lose some of their value unless we work together toward consistency among nations in interpretation and application of these standards.

There are, of course, numerous other subjects worthy of future international efforts. Some have suggested the possibility of examining the development of multi-national positions on subjects, such as minority shareholder rights and the use of audit committees. I am confident that many similarly provocative thoughts will percolate out of this conference.

Over the years, our international successes have been achieved in a variety of ways - through unilateral efforts by us or by other regulators, through bi-lateral agreements, such as MOU's, and through multi-lateral projects, such as those sponsored by IOSCO. Each approach has merits and may be successful, depending upon the nature of the issue or goal, and we will continue to use all three approaches in the future. Underlying each approach is, of course, a foundation of long-standing, informal and close working relationships among regulators. It will continue to be the key to our own

efforts and to the success of what I hope will be an increasing number of joint projects.

This is the first conference in two decades devoted to a broad examination of fundamental securities regulation issues; it could not be more timely. At the start of my stewardship of the SEC, we recognize the need for a fundamental reexamination of our regulatory framework. And, we would be naïve if we believed that we could conduct this examination in isolation.

All of us must consider changes in our markets in a global context. While we will not, and cannot, always share the same vision on every issue, there is much we can learn from one another, and much that requires us to work together. The cooperative spirit that has served us so well in the past must be our guiding principle as we marshal our collective resources to meet the challenges that lie ahead. Today, and here and now, we begin that process anew.

The challenges that lie ahead are exciting. Together - public and private sectors; domestic and foreign regulators - we can reshape the very essence of our capital markets, our disclosure system, and the rules governing both of them, with thoughtfulness, care and creativity. It is an enormous challenge, but who could ask for more?

Thank you.

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