Introduction

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INTRODUCTION

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The last few years have seen an enormous increase in the amount of raw material which the practicing securities lawyer must digest to keep current. The information explosion in the securities field is reflected in the launching of a weekly service analyzing and selectively reprinting legislation, proposed legislation, rules, proposed rules, cases, briefs, speeches, studies and conferences,¹ a bi-monthly service printing short articles and case analyses,² and the publication of a book, with periodic supplements, devoted entirely to rule 10b-5.³ In this hectic environment the practicing securities lawyer will welcome a volume of articles which thoughtfully analyzes a number of the most important developments of the recent period. The articles in this Symposium present the opportunity for reflection which the rush of current material normally stifles.

This Symposium is the second in a series of special editions published by the St. John's Law Review. The first special edition looked at conglomerate mergers and acquisitions.⁴ In the introduction to that issue the editors stated that:

"The project is grounded upon a firm belief that the problems posed by conglomerate growth transcend traditional academic boundaries and can be analyzed satisfactorily only within an interdisciplinary context. We have thus sought to overcome the patent inadequacy of previous publications, which have invariably been limited to a single perspective — be it law or economics, taxation or finance, management or accounting."⁵

The editors of this Symposium did not attempt the same inter-

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¹ SEC. REG. & L. REP.
² REV. OF SEC. REG.
⁵ Id. at xiii.
disciplinary approach, opting instead to fulfill the securities practitioner's demand for a more traditional analysis.

However, I suspect that the editors of the *St. John's Law Review* will be encouraged by their success with this volume to supplement it with a volume which pursues, in the securities regulation area, the interdisciplinary path cited as necessary for a full understanding of the conglomerate phenomenon.

The importance of applying the interdisciplinary approach to the securities field is suggested in some of these articles and underscored by a significant regulatory event which occurred after this Symposium was planned. This event was the publication in March 1971 of the Institutional Investor Study and the crystallization of initial SEC recommendations based on its findings. Dr. Donald Farrar, an economist and presently Senior Fellow at the University of Pennsylvania Law School Center for Study of Financial Institutions, directed the Study. The Associate Directors of the Study, Dr. Seymour Smidt and Dr. Lawrence Jones, are also economists.

Although the Study has not yet had great public impact, it moved the SEC to recommend that economic studies "should be a major part of the Commission's regular and continuous activities," and to stress the need for developing a substantially larger internal economic research capability. An expanded economic research capability takes on added significance in the context of Professor Ratner's observations that the new generation of problems facing the SEC "intermix securities market questions with questions of capital allocation, anti-trust policy, tax policy and regulation of banks, insurance companies and other types of financial institutions."6

The economist-dominated Institutional Investor Study focused attention on at least two areas of major regulatory concern. First, the Study examined the impact on the growth of multi-purpose financial service organizations of regulatory provisions which limit price competition and encourage service competition. For example, the minimum commission rate structure of the exchange markets encourages member firms to offer services, such as investment advice, as a method of competing for customers for the firm's brokerage facilities. SEC action forcing the exchanges to permit negotiation of commissions on those portions of orders in excess of $500,000 seems to mark a first step in the process of requiring unbundling of service packages. It is likely that future regulatory effort will be directed toward requiring

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identification of specific services and their costs so that customers can buy only those services they wish. In the brokerage area, negotiated rates already are forcing the development of execution only rates—rates which will not underwrite provision of additional services such as research. In the mutual fund area, such regulatory effort provides impetus for analyzing out the cost of investment advice from the cost of providing other services under the investment advisory contract. By turning attention to price competition, the SEC is giving more weight than it previously has to promoting efficiency in the creation and marketing of financial services.

A second area on which the Institutional Investor Study focused attention is the need to develop a strong central market place for the trading of securities. Under the prodding of the Study the SEC announced that:

A major goal and ideal of the securities market and the securities industry has been the creation of a strong central market system for securities of national importance, in which all buying and selling interest in these securities could participate and be represented under a competitive regime. This goal has not yet been attained.7

The articulation of this goal gives needed direction to the SEC's attempts to discharge its regulatory responsibilities under the Securities Exchange Act.

The Institutional Investor Study makes an important contribution to the regulatory process by forcing the SEC to take account of economic techniques and insights in making regulatory decisions. I find that a welcome advance from remarks made over a year ago by the Solicitor of the SEC in a debate on the propriety of governmental regulation of insider trading. The Solicitor said:

Since I believe Congress was attempting to improve the morality of the market place, I think that the economic effort is largely irrelevant—at least in the absence of indications showing dire happenings to public investors or the market generally.8

The process of having economists work with lawyers in shaping the regulatory environment is not easy. There are differences of vocabulary: most lawyers do not speak math. And there are differences in approach. Economists tend to limit themselves to exploring those

arrangements which, under a given set of circumstances, produce the greatest efficiency. Lawyers, on the other hand, search for institutional arrangements which best accommodate a wide variety of interests. For example, an economist might see a central market place with a number of large firms accounting for almost all the securities business as providing the economically most efficient arrangement. The lawyer-dominated regulatory agency has traditionally sought to balance against such an arrangement desires such as preservation of small broker-dealers and regionally oriented firms which may be based on political or social considerations. When the lawyer in the regulatory agency works on the problem of market structure with an economist, he is forced specifically to identify the various interests other than efficiency which he seeks to serve. The identification process leads the lawyer to assess the cost of departing from the economically most efficient solution and may show him that it is too expensive to accommodate certain interests or that the various interests he seeks to protect can most efficiently be served through a new set of arrangements. Thus, the decision making process can be enhanced by forcing lawyers to subject their analyses to the discipline imposed by the economist's questions.

The very useful function served by this Symposium's collection of lawyer-written articles argues for supplementation by another volume which applies to the securities field the interdisciplinary philosophy of the earlier Symposium on conglomerate mergers and acquisitions. I hope that the editors of this future volume will not only invite economists to contribute articles but also require at least some of the articles to be co-authored by an economist and a lawyer. Co-authorship forces the lawyer and the economist to participate together in the entire process of analyzing a problem. The discipline of such co-authorship should make an important contribution to shaping a better regulatory environment for the securities business.