

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

June 16, 1976

The Honorable Elliot L. Richardson  
The Secretary of Commerce  
Washington, D.C. 20230

Dear Mr. Secretary:

I was pleased to learn that the President and the Task Force support the Commission's proposed legislation submitted to the Senate Committee on Banking, Housing and Urban Affairs on May 12, 1976. Our proposal seems to have attracted considerable support in Congress as well, and presently appears to be the only one over which no substantial disagreement exists. I therefore am hopeful that the Congress will move swiftly to enact it while consideration is being given to the Administration's proposal and others. We will be prepared to offer our comments on the Administration's proposal when called upon.

Your letter of June 11, 1976, to Senator Proxmire seems to contain a curious criticism of the manner in which the Securities and Exchange Commission has dealt with matters involving questionable or illegal corporate payments. We consider your comments to be particularly unfortunate since neither you nor anyone on your staff previously discussed them with us.

You suggest that the Commission's enforcement policies in this area "may be based on tenuous legal grounds." This may reflect a failure to distinguish between some disclosures made voluntarily by certain corporations and the disclosures we have required under the federal securities laws. The Commission has to date brought seventeen actions in the United States District Court alleging that the named defendants have violated applicable provisions of the federal securities laws by failing to disclose material domestic or foreign payments. In none of the cases that arose during their respective tenures did Mr. Garrett or Mr. Sommer, whose statements you quote, express opposition to the institution of the actions. All of the actions have been concluded by the entry of final judgments of permanent injunction against the corporate defendants, consented to by them.

The Department of Justice and Department of State expressed an interest in certain of these actions, and neither those departments nor any other branch of government previously has criticized the Commission's handling of these cases or the legal theories on which they were based. The Commission is concerned that your comments may cast an ambiguous cloud over our activities and that they may be erroneously cited by those who may be the subject of current or future enforcement actions.

You also characterize the present SEC policy as one of "continued zeal or militancy," apparently suggesting an antagonism to prior Commission action that could have been more responsibly raised in discussion directly with me or our staff.

You go on to indicate that “it may be asked whether the SEC, in its expansive definition of materiality, has not raised serious questions as to the purpose and scope of the securities laws and the statutory role of the Commission.”

That your letter was delivered on the same day that the Supreme Court of the United States expressly endorsed the Commission’s standard of materiality in TSC Industries, Inc. v. Northway, Inc. (No. 74-1471 June 14, 1976), slip op. at 11, n.10, is perhaps of slight significance. Again, however, the more important point is that you seem to have challenged the Commission’s action on a broad front without either identifying the instances to which you refer or offering the Commission an opportunity to respond.

Your decision to use the Task Force report to broadly criticize the Commission and ambiguously challenge the authority under which we have acted is unfounded, inappropriate and ill-timed. It is our firm belief that the Commission’s report to the Senate Committee on Banking, Housing and Urban Affairs on “Questionable and Illegal Corporate Payments and Practices” presents a responsible analysis of how the Commission is proceeding in this area and that our actions, so described, are entirely within our statutory authority.

If you believe we are incorrect, we would appreciate a more useful articulation of the problems you perceive.

Sincerely,

Roderick M. Hills  
Chairman

cc: Members of the White  
House Task Force on  
Questionable Corporate  
Payments Abroad