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RECENT DEVELOPMENTS CONCERNING FOREIGN ISSUER DISCLOSURE

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I am pleased and honored to represent the United States Securities and Exchange Commission ("SEC") before this distinguished audience. I will discuss with you matters which I believe are of mutual concern and importance affecting the trading of Japanese securities in the American securities markets. The SEC needs to know about the similarities and differences between capital markets, and their regulation. Such understanding should give my agency a better understanding of the interrelationship of the evolving U.S. national market system and the growing international markets, and a better measure of the impact of our regulations on capital allocation. We need to examine issues, such as market structure and corporate disclosure, from an international as well as a national perspective.

To many of you, particularly directors of companies whose shares trade in the U.S. markets, the SEC is a household name. Others are not as familiar with my agency or the laws we administer. So, at the risk of telling some of you what you already know, I will begin my talk by telling you about the SEC.

The SEC is an independent regulatory agency which exercises prosecutorial, legislative and judicial powers. Although we were created by the Congress, and our Commissioners

are appointed by the President, we are independent of both the Executive and Legislative branches, except to the extent of Congressional control of our budget and judicial review of our decisions. This concept of agency independence is often difficult for nationals of other countries to grasp, but it is crucial to the way in which the SEC does its work. The SEC is not an arm of the Department of the Treasury.

Our primary statutory responsibilities are investor protection and the promotion of fair and equitable public trading markets. We do not have any direct or primary responsibility for monetary, economic or tax policy, although our functions may indirectly affect the general economy. However, investor confidence, which we were formed to foster, is an important component of capital formation and business growth.

Traditionally, the United States has favored free international trade and free international flow of capital. Although controls on capital outflows have been imposed from time to time, the general long term attitude of the government has been to permit Americans to invest their money as they choose, at home or abroad. Similarly, we have few prohibitions against foreign investment in U.S. business.

Accordingly, the United States generally permits free access by foreign issuers and investors to the United States capital markets, subject to compliance with SEC registration and other requirements. These requirements are primarily for the purpose of protecting investors through the mechanism of disclosure, not inhibiting the free flows of capital in the international securities markets. Although the SEC has no mandate to either encourage or discourage international securities transactions, the Commission has tried to accommodate the general U.S. policy favoring the free flow of investment capital without jeopardizing its mandate to protect investors.

To understand the different capital markets of the world, we must appreciate the philosophies underlying American and other approaches to regulation of securities and securities markets -- approaches which reflect differences in culture and history. The SEC's mandate to foster investor confidence is achieved primarily by requiring full disclosure by public companies -- both initially when a corporation sells securities to the public and thereafter on a continuing basis. The Commission does not pass on the merits of any securities offering. It does not block access of any company to the capital

markets, but rather insists that full and fair disclosure be afforded to permit a reasonable investment decision to be made. Full disclosure is especially important in the U.S. where there is a broad investor base, and a tradition of entrepreneurial activity of raising venture capital and then going public. Many other countries regulate the securities markets under different conditions and therefore different philosophies. Although the U.S and Japanese markets operate under some similar conditions and are in some ways regulated pursuant to similar philosophies, there are, nonetheless, differences which must be recognized and reasonably accommodated.

I believe that the growing internationalization of the world capital markets, and the efforts of international organizations such as the OECD, promote the harmonization of regulatory requirements. Moreover, the internationalization of the capital markets is just one part of a movement toward an increasingly interdependent and integrated world economy. Many concerns of the SEC, such as insider trading, changing accounting principles in response to inflation and other developments, new market trading mechanisms, takeovers and mergers, and new financial instruments, are also receiving attention in many other countries.

To proceed from the general to a matter of more specific and immediate concern, I would like to discuss with you SEC disclosure policy affecting foreign issuers. I realize, of course, that at Keidanren, I am the foreign government official. Nevertheless, I will be referring in my talk to countries other than the United States as "foreign" and I hope you will forgive that somewhat parochial vocabulary.

I want particularly to focus on the recently-adopted requirements which set forth comprehensive disclosure provisions for annual and periodic reporting by foreign companies. Since the disclosure form utilized by foreign issuers is Form 20-F, these are known as the 20F requirements. The 20F requirements take into consideration international disclosure guidelines and thus are an important factor in an evolving world market system -- a phenomenon increasingly more inevitable as economics and technology draw us closer and closer.

As I mentioned, disclosure is the foundation of the U.S. securities laws. However, in administering the disclosure requirements with respect to non-U.S. issuers, the Commission is faced with a dilemma between the information needs of U.S. investors and the attitudes and customs of other countries toward U.S.-type disclosure. This

dilemma was at the heart of the controversy surrounding the SEC's 20F regulations as originally proposed. On the one hand, the Commission's present disclosure requirements for domestic issuers have evolved with the increased complexity of our economy and are based on findings that certain information is meaningful to investors in making investment decisions. On the other hand, the Commission does not wish to deprive unfairly foreign issuers of access to U.S. capital markets or American investors of the opportunity to invest in such securities by imposing disclosure requirements having the effect of barring the offering. You must appreciate, however, that if disclosure is examined purely on the basis of investor protection, there is no logical reason why securities for a Japanese company should trade in the U.S. on other than a basis of parity with shares of U.S. companies. Presumably American investors needs are the same in both cases.

Over the years the Commission has tried to establish a middle ground and strived to make accommodation for non-U.S. issuers in complying with our requirements. While the Commission generally has been reluctant to treat foreign issuers very much differently from domestic issuers when they make a public offering of securities in the U.S., it has been somewhat more receptive to easing certain of the continuous disclosure requirements for foreign securities listed on U.S. exchanges.

In the non-financial area, concessions for foreign issuers making securities offerings in the U.S. have been limited, for the most part, to management remuneration disclosures. In the financial area, the Commission has allowed some deviation for financial reporting on a case-by-case basis. Generally, the Commission has accepted, where practicable, footnote disclosures in financial statements which reconcile the effects of differences in foreign and U.S. accounting principles.

Several years ago, in an effort to reassess foreign issuer disclosure, the Commission proposed amendments to its foreign issuer periodic disclosure requirements. A new form was designed to consolidate both registration and annual reports and do away with old Forms 20 and 20-K. This new form, as originally proposed, would have resulted in certain foreign issuers becoming subject, for the first time, to substantially the same registration and annual reporting disclosure requirements as domestic issuers. Currently, ten Japanese companies file periodic reports with the SEC and are directly affected by SEC rule proposals concerning foreign issuers.

The commentators on this proposal were almost unanimously critical. I should note that Keidanren submitted a particularly informative comment letter regarding the segment

reporting aspect of the proposal. Many commentators complained of the compliance burden and costs involved and stated they would reevaluate their participation in the U.S. marketplace. Many other persons thought the SEC was not giving proper deference to foreign custom or practice in reporting, for example, management remuneration disclosure and segment reporting. In view of the storm created by these proposals and the Commission's long deliberations over them, I am here today to report and explain the outcome. Assisting me in that task after my remarks will be Edward F. Greene, Director of the SEC's Division of Corporation Finance. Mr. Greene is the Commission's top staff official responsible for administering disclosure requirements for all registered companies.

Many of you are familiar with the notice and comment process of the SEC and other federal regulatory agencies, but others in this audience may not be. Under U. S. law, before the SEC can pass any final regulation, we must publish for public comment a proposed regulation. Often the proposed regulation will be broader or more stringent than the regulation which will finally be adopted. Understanding the views of commentators who will be subject to or be benefited by the regulations is an important part of the decision-making process whereby new rules are passed.

I would now like to explain what the Commission did last month in adopting a new Form 20F and related rules. As you are probably aware, old Form 20-K to a significant degree had become out of date. New Form 20F, which consolidates old Forms 20 and 20-K, calls for narrative disclosure less extensive than that for U S. companies but nevertheless substantially more extensive than old Form 20K required. The essence of the Commission's thinking is adopting the new form and rules can best be understood by focusing on the more controversial issues. On some issues the Commission withdrew from its proposal, on others it compromised, while with respect to still others it adopted the proposal without change.

In considering the 20F proposal and the comments received, the Commission looked carefully at developing international standards of disclosure for guidance. In 1976, the OECD adopted a "Declaration on International and Multi-National Enterprises," a part of which consists of guidelines which the multi-national enterprises are expected to observe, including one pertaining to disclosure of information. The OECD has also published disclosure guidelines for information in prospectuses for public offerings. The United Nations and the European Economic Community have taken similiar initiatives. While these guidelines are only advisory, they are a meaningful direction for uniform disclosure requirements in the future.

Moreover, an SEC staff study of prospectuses used in recent Eurobond offerings revealed that present disclosure practices of many foreign issuers in that market are consistent with the 20F requirements as adopted. This is an evolutionary process in which accommodations must be made along the way. I believe the Form 20F and related rules recently adopted by the Commission reflect the movement for uniform disclosure in the international community and, at the same time, reflect our understanding that in terms of disclosure meaningful differences do exist among countries and must be taken into account.

Probably the most controversial of the proposals was the industry and geographic segment reporting requirement. As mentioned, Keidanren in its comment letter was most informative. It noted that Japanese companies would incur a great cost burden to develop segment information on a profits basis. Convinced by this and other arguments, and balancing the interests involved, the Commission modified this requirement along the lines suggested by commentators. As adopted, Form 20F only requires specific segment reporting on a gross revenue basis. However, a general narrative disclosure would also be required if revenue and profit contributions of a respective segment differ significantly.

Another issue Keidanren was particularly concerned about was the Commission's replacement cost or inflation accounting requirement (ASR 190). As you no doubt realize, this is also a troublesome issue in the U.S. for domestic companies. In recognition that inflation accounting is a changing and developing area, the SEC recently rescinded its replacement cost rule (ASR 190) and deferred to new Rule 33 of the Financial Standards Accounting Board. FASB Rule 33 is the current initiative of the U.S. accounting community to deal with the effect inflation has on a company's financial statements. You should note that foreign issuers generally are not subject to FASB 33, and thus have no current U.S. requirements with respect to inflation accounting.

In other provisions of Form 20F, the Commission simply withdrew its proposal and deferred to foreign law. For example, with respect to the management remuneration provision, the proposed Form 20F would have required the identification of the three highest paid directors or officers and the aggregate amount paid to them. This would have been in addition to the aggregate remuneration and similar benefits paid to all directors and officers as a group. However, the Commission deleted this provision from the adopted Form 20F. It decided to maintain the current disclosure practice for foreign issuers in this regard

without change. However, if foreign law requires the publication of management remuneration information to a greater extent, then it must be disclosed in Form 20F to that extent.

Another provision under the proposal would have required the disclosure of material transactions between the foreign issuer and its management. This conflict of interest requirement is imposed on U.S. companies which must make such disclosure. The Commission again decided that foreign practice, custom, and laws should be the best guide in an area which relates primarily to the quality of management. It, therefore, decided not to require disclosure of such transactions unless foreign law imposed such a requirement.

Still another proposal would have required extensive discussion of the business experiences and general backgrounds of the foreign issuers' officers and directors. The Commission withdrew this proposal because, as the commentators pointed out, it was inconsistent with the requirements of many foreign jurisdictions and international guidelines.

Finally, you should also be aware that the Commission decided to maintain the deadline for filing the 20F annual report at 6 months after the end of the fiscal year. And, as is now the case, financial statements need not comply with U.S. generally accepted accounting principles or SEC Regulation S-X. However, a discussion of differences from those accounting standards is required.

Beyond adoption of this modified Form 20F, the Commission also adopted related rules which are significant to foreign issuers. We decided to amend Form 6K, the periodic report for foreign issuers, to require English translation of material information furnished or otherwise disseminated to shareholders. The balance struck here was in favor of the American investor who, it was thought, would benefit to a large degree while the foreign company's cost burden would be no more than minimal. However, the SEC accommodated foreign issuers by deciding not to require the translation of documents filed with the SEC but not sent to investors.

Another rule change will allow certain foreign issuers to use a simplified registration statement for securities offered on the exercise of outstanding rights by existing shareholders. Under this new procedure, rights offerings by foreign companies to American shareholders will be less burdensome and less costly than is presently the case.

The final rather important amendment the Commission adopted last month concerns application of SEC regulation over tender offers for securities of foreign companies. By amending Rule 3a12-3, the Commission withdrew the exemption for foreign companies from U.S. tender offer requirements. In other words, if a tender offer is made for securities of a foreign company which has American shareholders, SEC tender offer requirements <u>may</u> apply.

This depends on whether a sufficient jurisdictional basis for asserting such authority exists by the SEC. The amendment removing the foreign issuer exemption did not, however, substitute standards as to when that authority would be asserted. Thus the vagaries of international law and extraterritoriality obtain.

I have gone through this list of so-called "foreign disclosure matters" because they are current at the SEC and because they directly affect you in coming to our markets. I hope that the decisions made by the Commission in connection with Form 20F and the related rules prove reasonable and wise. Rather than imposing the full brunt of U.S. disclosure regulation on foreign companies -- a message the original 20F proposals unfortunately may have conveyed -- the Commission has taken a measured course of action in recognition of the various interests involved. I believe the appropriate middle ground between the legitimate needs of American investors and those of foreign issuers coming to our markets must be viewed in a larger context of the international community.

While the responsibility of the Securities and Exchange Commission to protect investors has not changed, we can no longer examine the impact of our actions only in New York and Chicago; we must look beyond to Tokyo, London,

and other capital markets. The world's economies are becoming increasingly international in scope, and the Commission must continue to examine the extent to which its efforts are consistent with that trend. Americans have traditionally believed that access to all capital markets should be as open as possible, consistent with the integrity of the marketplace and the protection of investors. This system has worked to the benefit of U.S. corporations and their shareholders and we commend it to you.