

DENNIS LEVINE, AN EXCEPTION OR THE NORM: INSIDE TRADING AND FOREIGN BANK SECRECY

I. INTRODUCTION

As national securities markets rapidly become international markets,¹ the idealized precept that federal securities laws are to create "a system providing equal access" to information for all investors, appears to falter.² One cause of this breakdown is "insider trading."³ Traditionally prosecuted under the Securities Exchange Act of 1934,⁴ illegal activities conducted through secret bank accounts outside U.S. borders and jurisdiction have posed a sobering challenge to prosecution of the inside trader.⁵

Problems in prosecution arise due to concerns of extraterritoriality and the application of domestic laws to foreign conduct.⁶ Foreign jurisdictions with bank secrecy laws may consider the disclosure of information concerning a bank account, including the identity of its holder, a criminal offense.⁷ This allows inside traders

1. *Crime and Secrecy: The Use of Offshore Banks and Companies, 1983: Hearings Before the Permanent Subcomm. on Investigation of the Senate Comm. on Governmental Affairs*, 98th Cong., 1st Sess. 320 (1983) [hereinafter *Senate Hearing*] (statement of John M. Fedders, Director, Division of Enforcement SEC); Note, *Secrecy and Blocking Laws*, 18 VAND. J. TRANSNAT'L L. 809, 810 (1985). "It soon will be possible to trade many securities of U. S. corporations 24 hours a day as a result of improved international communications and the growth of securities markets in London, Paris, Zurich, Singapore, Hong Kong, Tokyo and other financial centers." *Senate Hearing, supra*, at 320.

2. The Second Circuit Court of Appeals noted that federal securities laws implemented the Congressional purpose of creating a system providing "equal access" to information necessary for reasoned and intelligent investment decisions. *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 851-52 (2d Cir. 1968).

3. "Insider trading" is a term generally used to describe the act of purchasing or selling securities while in the possession of material non-public information (inside information) concerning an issuer of securities. Arkin, *Trading on Inside Information: Problems of Defining, Detecting, Prosecuting, and Defending Insider Trading Cases*, 270 PRACT. L. INST. 17 (1984). The inside information must be "material" information, which is information that would likely be "viewed by a reasonable investor as having significantly altered the 'total mix' of information made available"; thus, important in deciding whether to buy, sell, or hold a company's securities. *Id.* (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

4. 15 U.S.C. § 78 (1982); Note, *Bank Secrecy and Inside Trading*, 23 VIR. J. INT'L L. 605, 615 (1982-1983).

5. Note, *supra* note 4, at 605-06.

6. Note, *Extraterritoriality: Current Policy of the United States*, 12 SYR. J. INT'L L. & COM. 493 (1986).

7. Note, *supra* note 4, at 605-06. A violation of banking secrecy is punishable under Article 47 of the Swiss Federal Law Relating to Banks and Savings Institutions of Nov. 8, 1934, as amended by Federal Law of Mar. 11, 1971, and under the Swiss Penal Code,

to circumvent U.S. securities laws by conducting their investment transactions through these financial entities.⁸ Foreign banks acting as intermediaries for their customers, provide a means for an account holder to enter into anonymous sales and purchases of stock.⁹ The secrecy problem arises when the intermediary bank is asked to disclose information about an account, which it cannot do without being subject to liability under the secrecy laws of its home jurisdiction.¹⁰ Thus, neither the investor's identity nor information concerning the investments is available to the Securities Exchange Commission (SEC).¹¹ Generally, the SEC's only means of obtaining necessary information is through lengthy negotiations and litigation.¹²

As billions and billions of illegal dollars escape this country,¹³ U.S. policy has centered around treaty confirmations with bank secrecy jurisdictions.¹⁴ Much of this negotiation has been concentrated in Europe and the Caribbean Islands where extensive secrecy jurisdictions exist.¹⁵ Treaties provide a mechanism to acquire information, but at times prove cumbersome in ensuring quick prosecution of the inside trader.¹⁶

In Part II, this Note will examine the Dennis Levine case¹⁷ as a recent example of an inside trader's exploitation of U.S. securities laws. Part III looks at the general problem of extraterritoriality and foreign bank secrecy. Part IV highlights the problem of bank secrecy in Switzerland and the compromise ultimately

Schweizerisches Strafgesetzbuch [STGB] art. 273.

8. Note, *supra* note 1, at 812.

9. Note, *supra* note 4, at 606.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Senate Hearing, supra* note 1, at 320.

14. *See, e.g.,* Memorandum of Understanding to Establish Mutually Acceptable Means for Improving International Law Enforcement Cooperation in the Field of Insider Trading, Aug. 31, 1982, United States-Switzerland, *reprinted in* 22 I.L.M. 1 (1983) [hereinafter Memorandum]. Also, three years of negotiations with Cayman Islands resulted in the formulation of a treaty. *U.S. and Caymans Sign Crime Pact*, N.Y. Times, July 4, 1986, at D10, col. 2.

15. *See* DEP'T OF TREASURY, INTERNAL REVENUE SERV., TAX HAVEN INFORMATION BOOK (1982) [hereinafter TAX HAVEN INFORMATION BOOK]. Some of the secrecy jurisdictions are: Antigua, Austria, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, Costa Rica, the Channel Islands, Gibraltar, Grenada, Hong Kong, the Isle of Man, Liberia, Liechtenstein, Luxembourg, Monaco, the Republic of Nauru, the Netherlands, the Netherland Antilles, Panama, Singapore, S. Kitts, St. Vincent, Switzerland, and the Turks and Caicos Islands. *Id.* at ii.

16. *See infra* note 116 and accompanying text.

17. *See infra* note 28 and accompanying text.

achieved in that situation. Part V will look at attempted solutions to the bank secrecy problem and recommend further possible actions to pierce secrecy jurisdictions. Part VI will conclude that the SEC should adopt a pretrading disclosure system similar to that presently used by the Commodity Futures Trading Commission.

II. THE DENNIS LEVINE CASE

Recently, one of the largest inside trading cases ever was brought by the SEC.¹⁸ Dennis Levine, a former managing director of Drexel Burnham Lambert, pleaded guilty to criminal charges of tax evasion, securities fraud and perjury.¹⁹ The SEC alleged that Levine "illegally traded" in the securities of 54 companies between June 1980 and December 1985.²⁰ Over the five and one-half year period, Levine accumulated \$12.6 million in illegal profits.²¹

Dennis Levine represents the classic insider who employs the use of foreign bank secrecy to hide his illegal profits.²² Levine had an elaborate scheme that involved fictitious names, phony Panamanian corporations, and a Bahamas based financial institution.²³ Far from the exception, the Levine case was one of 35 inside trading cases the SEC had under investigation as of July 1986.²⁴

A unique and pervasive factor in the Levine case was the cooperation of the Bahamian government.²⁵ The Bahamas has traditionally been a secrecy jurisdiction, but to aid in the investigation,

18. *Drexel Official Accused by SEC of Inside Trades*, Wall St. J., May 13, 1986, at 3, col. 1. As was stated by SEC Enforcement Director Gary Lynch, "This is the largest insider trading case we've ever brought, not only in terms of profits but also the number of securities involved and the length of time over which the violations occurred." *Id.* at 22, col. 1; see *infra* note 28 and accompanying text.

19. Henry, *Circus Time: Wall Street Reels Over Scandal*, TIME, June 23, 1986, at 61; see also Wall St. J., May 13, 1986, at 3, col. 1. Bernard Meier, a Swiss resident, who acted as broker for Levine's trades from 1982 to 1985, was also named as defendant. Meier was a portfolio manager and assistant vice president at Nassau based Bank Leu International Ltd., a subsidiary of the Swiss Bank Leu. *Id.* at 22, col. 1.

20. *Id.* In all 54 cases, Levine traded while possessing "material non-public information" about actual or proposed tender offers, mergers, leveraged buyouts and other business combinations. *Id.* at 3, col. 1.

21. Henry, *Dark Clouds Over Wall Street*, TIME, May 26, 1986, at 48.

22. See *infra* note 23 and accompanying text.

23. Henry, *supra* note 21, at 48. Levine conducted his trades through Bernard Meier, an executive for the Bahamas subsidiary of Bank Leu, a Switzerland institution with headquarters in Zurich, Switzerland. Levine would purchase stocks in the name of two "dummy corporations" set up in Panama, "International Gold Inc." and "Diamond Holdings S.A." *Id.*

24. Henry, *supra* note 19, at 61.

25. See *infra* note 26 and accompanying text.

the Bahamian attorney general agreed not to prosecute the bank for disclosing information.²⁶ Although there is not a U.S.-Bahamian treaty which would allow SEC access to bank records, cooperation was given in this situation where bank secrecy had been used to promote fraud.²⁷

As of June 5, 1986, Levine was permanently enjoined from future violations of the Securities and Exchange Act of 1934.²⁸ Pursuant to an order of the court, Levine is barred from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer.²⁹ Levine was ordered to "disgorge" all the money he had deposited in the Bahamas bank, approximately \$10.6 million, and \$1 million of additional assets.³⁰ Levine also agreed to cooperate fully with the SEC's investigation of the matter, and any other related litigation that arose.³¹ Further sentencing of Levine is expected.

Evident in the Levine case, foreign bank secrecy could have a stifling impact on the prosecution of inside traders. Important in the disposition of that case was the cooperation of the Bahamian Government.³² Where such cooperation is not given, an alternative is the extraterritorial application of U.S. securities law. This alternative, however, often proves difficult.

III. PROBLEM OF EXTRATERRITORIALITY AND FOREIGN BANK SECRECY

A. FOREIGN BANK SECRECY

According to SEC officials, incidents of securities law violations vary proportionally to the size and activity of the securities market.³³ From 1978 to 1983, total foreign investment in the

26. Penn, *Bahamas Official Suggests He May Waive Bank Secrecy Laws Again in Insider Cases*, Wall St. J., May 28, 1986, at 12, col. 1. Paul Adderley, attorney general of the Bahamas waived the bank secrecy laws in the Levine case.

27. *Id.* As was stated by Adderley, "you can't go to a bank in the Bahamas and try to invoke bank secrecy to hide dishonesty, the [law] was never intended to do that." *Id.*

28. SEC v. Levine, [1986-1987 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,761, at 93,703 (S.D.N.Y. 1986).

29. *Id.* at 93,703-04.

30. *Id.* at 93,703.

31. *Id.*

32. See Penn, *supra* note 26, at 12, col. 1.

33. GEN. ACCOUNTING OFFICE, STATISTICS ON SEC ENFORCEMENT PROGRAM: REP. TO THE CHAIRMAN, SUBCOMM. ON OVERSIGHT AND INVESTIGATION OF THE COMM. ON ENERGY AND COM. 3 (1985).

United States had increased from \$42.4 billion to \$133.5 billion.³⁴ This increase in investment has led to increased complexity in enforcement and difficulty in conducting securities law violation investigations.³⁵

Accompanying this rise in foreign investment, is a corresponding increase in the number of securities transactions initiated by financial institutions located in countries with secrecy laws.³⁶ Bank secrecy laws protect the confidentiality of information held by the financial institution.³⁷ Banks operating within these countries are subject to civil liability and criminal prosecutions if they turn their records over to U.S. enforcement officials.³⁸ These laws protect the bank customer's identity, business records, and other details relating to the customer's bank account.³⁹ There are approximately 20 nations that maintain some form of statutory bank secrecy, while still more are based on common law and other rationales.⁴⁰

34. *Id.* at 44, app. 8.

35. *Id.*

36. Note, *supra* note 1, at 819. It has been estimated that 100 percent of foreign purchases of stocks and bonds in U.S. markets in 1983 were conducted by institutions which are protected by secrecy or blocking laws. *Id.* (citing Editorial, *A Question of Conduct*, Wall St. J., Nov. 19, 1984, at 32, col. 1).

37. *Id.*

38. *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2; *see infra* note 40.

39. Note, *supra* note 1, at 819.

40. *Id.* at 821; *see, e.g., Senate Hearing, supra* note 1, at 333, n.3:

The Bahamas Islands, An Act to Regulate Banking Business and Trust Companies within the Colony. No. 64 of 1965, assented to October 28, 1965:

10. (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court of competent jurisdiction within the Colony or under the provisions of any law of the Colony, no person shall disclose any information relating to any application by any person under the provisions of this Act or to the affairs of a licensee or of any customer of a licensee which he has acquired in the performance of his duties or the exercise of his functions under this Act.

(2) Every person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence against this act and shall be liable on summary conviction to a fine not exceeding one thousand pounds or to a term of imprisonment not exceeding one year or to both such fine and imprisonment;

The Cayman Islands, The Confidential Relationships (Preservation) Law (Law 16 of 1976), September 27, 1976 as amended October 2, 1979:

4b. [Whoever] wilfully obtains or attempts to obtain confidential information to which he is not entitled is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or both.

Article 47(b) of the Swiss Banking Act:

1. Anyone who in his capacity as an officer or employee of a bank, or as an auditor or his employee, or as a member of the banking commission or as an officer or em-

Nations with secrecy laws generally view confidentiality as a fundamental right.⁴¹ Protections under bank secrecy laws have been compared to the attorney-client privilege in the United States, because “[b]oth restrict discovery of information in order that principles perceived as more fundamental [might be] upheld.”⁴² Despite strict adherence to underlying principles of secrecy, a secrecy jurisdiction will generally permit disclosure if a customer waives his right to the confidentiality protections.⁴³ Extraterritorial problems arise when secrecy jurisdictions have different economic values and apply their own laws to the financial issues that arise.⁴⁴ As noted by top government officials, the United States assessed need to reach persons transacting through foreign nations often runs counter to foreign interests and principles of sovereignty.⁴⁵

As a result of secrecy laws, the SEC has encountered serious difficulties in obtaining information during investigations of cases pertaining to inside trading.⁴⁶ The use of secrecy laws to hide violations of U.S. laws has created a *de facto* double standard for enforcement of securities regulations.⁴⁷ One standard exists for those

ployee of its bureau intentionally violates his duty to observe silence or his professional rule of secrecy or anyone who induces or attempts to induce a person to commit any such offense, shall be liable to a fine of up to 50,000 francs or imprisonment for up to six months, or both.

2. If the offender acted with negligence, he shall be liable to a fine of up to 30,000 francs.

3. The violation of professional secrecy is also punishable after the termination of the official or contractual relationship or of the professional performance.

4. The federal or cantonal dispositions on the obligation to testify or to provide an authority with information remain reserved.

Additionally, Article 273 of the Swiss Penal Code prohibits the disclosure to a foreign authority or foreign private person of information of an economic nature if there is a direct interest of Switzerland as a political or economic entity to keep this information secret, or if third persons, having an interest worth being protected in keeping the information secret, have not duly given in advance their consent to the disclosure.

Id.

41. *Id.*

42. Note, *supra* note 1, at 821.

43. *Id.*

44. Note, *supra* note 6, at 497.

45. See Address by Secretary Schultz, before the South Carolina Bar Association, Columbia, South Carolina (May 5, 1984) (published in 84 DEP'T ST. BULL. 33 (1984)). In his address, Schultz noted “our assessment of our need to reach persons or property abroad often run up against other nations’ conceptions of their sovereignty and interests and, if not handled skillfully and sensitively, can escalate into legal and political disputes.”

46. See, e.g., *infra* notes 95 & 116.

47. Senate Hearing, *supra* note 1, at 318 (statement of John M. Fedders).

trading within the United States, and a lesser standard exists for those trading within the United States but from beyond U.S. borders.⁴⁸ If persons engaging in fraudulent activity had done so entirely within the United States, the SEC would be able to investigate and hold them accountable for violating domestic securities laws.⁴⁹ A major goal of the SEC is to eradicate this *de facto* double standard.⁵⁰ An ability to circumvent the protective nature of secrecy jurisdictions is the first step.

B. EXTRATERRITORIALITY

Foreign bank secrecy statutes have long been regarded as a serious hindrance to enforcement of U.S. securities laws.⁵¹ At issue is the sovereignty of the United States and the SEC's ability to preserve the integrity of the U.S. security markets.⁵² Where secrecy laws are used to infringe upon U.S. sovereignty, they effectively invade the territory of the United States.⁵³ This basic problem becomes acute when attempting to prosecute the inside trader through extraterritorial application of U.S. securities law.

Before a secrecy jurisdiction may be compelled to honor an SEC request for information, some basis for jurisdiction must be established.⁵⁴ Under international law, the jurisdiction of a state depends upon its interests in exercising jurisdiction in light of the competing interest of other states.⁵⁵ In examining competing interests, the state's interest is balanced against the transaction or

48. *Id.*

49. Under the Bank Secrecy Act, the SEC would possess information needed to prosecute fraudulent dealings. See *infra* notes 79-83 and accompanying text.

50. *Senate Hearing, supra* note 1, at 318 (statement of John M. Fedders).

51. *Id.* at 320; see also H.R. REP. NO. 975, 91st Cong., 2d Sess. 12, reprinted in 1970 U.S. CODE CONG. & ADMIN. NEWS 4394, 4397. "As note[d] by Congress in 1970: Secret foreign bank accounts and secret foreign financial institutions have permitted a proliferation of "white collar" crime . . . [and] have allowed Americans and others to avoid the laws and regulations concerning securities and exchanges The debilitating effects of the use of these secret institutions on Americans and on the American economy are vast." *Id.*

52. *Senate Hearing, supra* note 1, at 321 (statement of John M. Fedders).

53. *Id.*

54. Note, *Offshore Funds and Rule 10b-5: An International Law Approach to Extraterritorial Jurisdiction Under the Securities Exchange Act of 1934*, 8 FORDHAM INT'L L. J. 396, 401 (1985) [hereinafter *Offshore Funds*]; see also Note, *Extraterritorial Jurisdiction and the Federal Money Laundering Offense*, 22 STAN. J. INT'L L. 389, 398-406 (1986) [hereinafter *Extraterritorial Jurisdiction*]. International law recognizes three fundamental bases of jurisdiction, those based on (1) territory, (2) nationality, (3) the effects doctrine. *Id.* (citing RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW § 17 (1965)).

55. *Offshore Funds, supra* note 54, at 402.

event in question, the person to be affected,⁵⁶ the state's interest in protecting itself against actions executed outside its territory that threaten its existence, and certain universally condemned activities.⁵⁷ In determining jurisdiction over these securities transactions, these factors are balanced with others in accordance with the reasonableness of a given country's assertion of jurisdiction over the matter.⁵⁸ Extraterritorial problems become especially apparent when foreign secrecy jurisdictions subjectively consider their secrecy requirements more important than U.S. inside trading prohibitions.⁵⁹ Without foreign consent to U.S. jurisdiction, circumvention of foreign secrecy laws is unlikely.⁶⁰

One country traditionally recognized for secrecy protections is Switzerland.⁶¹ In an attempt to limit problems of extraterritorial application of U.S. securities law, the U.S. Government negotiated various agreements with Switzerland which ultimately provided for a mechanism to access information.⁶² Examination of the Switzerland situation is illustrative of the general foreign bank secrecy problem.

56. *Id.*

57. *Id.* at 404.

58. RESTATEMENT (SECOND) FOREIGN RELATIONS LAW § 403(2) (rev. tent. draft No. 1-3, 1980-1982). As stated in the Restatement:

Whether the exercise of jurisdiction is unreasonable is judged by evaluating all relevant factors, including: (a) the extent to which the activity (i) takes place within the regulating state, or (ii) has substantial, direct, and foreseeable effect upon or in the regulating state; (b) the links, such as nationality, residence, or economic activity, between the regulating state and the persons principally responsible for the activity to be regulated, or between that state and those whom the law or regulation is designed to protect; (c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted; (d) the existence of justified expectations that might be protected or hurt by the regulation in question; (e) the importance of regulation to the international political, legal or economic system; (f) the extent to which such regulation is consistent with the traditions of the international system; (g) the extent to which another state may have an interest in regulating the activity; (h) the likelihood of conflict with regulation by other states.

Id.

59. See *infra* note 60 and accompanying text.

60. *Extraterritorial Jurisdiction*, *supra* note 54, at 404-10. Traditionally three types of jurisdiction are distinguished: executive, judicial, and legislative. Executive and judicial jurisdictions both are sometimes referred to as "enforcement jurisdictions" this term generally means the ability of a state under international law to enforce a rule of law. As a general rule, a state may not exercise its enforcement jurisdiction in the territory of another state without the permission or consent of the other state. *Id.*

61. See *infra* note 65 and accompanying text.

62. See, e.g., Memorandum, *supra* note 14.

IV. THE SWISS EXAMPLE

Switzerland originally codified the secrecy requirement for banking affairs in the Banking Law of 1934.⁶³ The Swiss action was in response to Nazi persecution of German Jews and others who held private assets in Swiss banks in violation of German law.⁶⁴ Swiss banks have traditionally played the financial intermediary role for clients by acting as stockbroker, underwriters, and mutual fund managers.⁶⁵ The Swiss bank has acted in these roles through "omnibus accounts" registered in the name of the bank only.⁶⁶ Swiss bank secrecy has effectively concealed the identity of the real party whose interest is put forth by the bank.⁶⁷

Several attempts were made by the U.S. enforcement and legal bodies to pierce the Swiss secrecy wall.⁶⁸ These attempts finally resulted in the United States and Swiss Memorandum of Understanding on Inside Trading.⁶⁹ The memorandum, although a milestone, by no means makes the acquisition of information easy. There are several reviewing steps through which an information request by the United States Department of Justice or SEC must pass.⁷⁰ Even if the request passes all the steps, the bank customer is first notified and allowed to defend his position to the Swiss authorities.⁷¹ If the Swiss authorities are satisfied that no inside trading has taken place, then no information passes to the U.S. author-

63. Federal Law Relating to Banks and Savings Institutions of Nov. 8, 1934, as amended by Federal Law of Mar. 11, 1971. The law was intended to protect investors by instituting various regulations on banking activities. See Note, *supra* note 4, at 608.

64. *Id.*

65. *Id.* at 611.

66. *Id.* at 612.

67. *Id.*; see Note, *Secret Foreign Bank Accounts*, 6 TEX. INT'L L. J. 107, 121-22 (1970). These omnibus accounts are typically only identifiable by a number. Only a few top bank officials can connect the numbered account with the name of the owner. When a person receives a numbered account his signature either becomes his number written in long hand or a false name assigned to him. As a further example of their intent to protect secrecy, special carriers and "networks of semiclandestine agents" are used by some banks to deliver correspondence, thus avoiding the attention a Swiss postage stamp might bring. Even when the person deals personally with the bank his anonymity is frequently assured through the use of secret entrances, and private soundproof conference rooms. *Id.*

68. See *S.A. v. Rogers*, 357 U.S. 197 (1958); *SEC v. Banca Della Svizzera Italiana*, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144 (S.D.N.Y. 1981); Bank Secrecy Act of 1970, Pub. L. No. 91-508, 84 Stat. 1116 (codified at 31 U.S.C. §§ 5311-5322 (1982)), 31 C.F.R. § 103 (1986); Treaty for Mutual Assistance in Criminal Matters, May 25, 1973, United States-Switzerland, 27 U.S.T. 2019, T.I.A.S. No. 8302 (entered into force Jan. 23, 1977) [hereinafter *Swiss Treaty*].

69. Memorandum, *supra* note 14.

70. Note, *supra* note 4, at 626-28.

71. *Id.* at 627.

ities.⁷² Only if the Swiss authorities are not satisfied with the customer's explanation are records then turned over.⁷³

As cumbersome as the process seems,⁷⁴ the memorandum gives U.S. enforcement officials a means to prosecute inside traders.⁷⁵ Due to the U.S.-Switzerland agreement, inside traders have been reluctant to use Swiss banks and have looked to other secrecy nations.⁷⁶ Agreements similar to that with Switzerland generally do not exist with other secrecy havens. Consequently, U. S. enforcement authorities have, where necessary, used alternative methods of obtaining disclosure.

V. TRADITIONAL METHODS OF OBTAINING DISCLOSURE

A. EXTRATERRITORIAL APPLICATION OF UNITED STATES LAW

One of the first U.S. legislative efforts to combat the use of foreign bank accounts was the Bank Secrecy Act(BSA)⁷⁷ passed by Congress in 1970. The act applies only to American citizens and those doing business in the United States.⁷⁸ The act requires banks and other financial institutions⁷⁹ to maintain extensive records⁸⁰ and file reports⁸¹ with the Secretary of the Treasury concerning certain domestic security transactions.⁸² Failure to file the report, filing of a false or misleading report, or wilful violation of the act and its regulations can result in both civil and criminal penalties for the violator.⁸³

Although the BSA has been helpful to some government enforcement agencies,⁸⁴ its use in hampering unlawful securities

72. *Id.* at 628.

73. *Id.*

74. See Note, *supra* note 4, at 626-28; see, e.g., *infra* note 95.

75. See *supra* note 74.

76. Note, *supra* note 4, at 623-24. Some countries with strict secrecy laws have been overly eager to shield accounts from foreign investigations. One example is the Bahamas, which offered tighter secrecy after the Swiss eased their protections. As a result, Bahamian financial institutions subsequently experienced great growth in their trustee business. *Id.*

77. 31 U.S.C. §§ 5311-5322 (1982); see also 31 C.F.R. pt. 103 (1986); Note, *Foreign Bank Secrecy and the Evasion of United States Securities Laws*, 9 INT'L L. & POL. 417, 432 (1977).

78. Note, *supra* note 77, at 432.

79. See 31 C.F.R. § 103.11(a)-(c),(e),(g)-(i) (1986).

80. See *id.* § 103.31-.37.

81. See *id.* § 103.21-.26.

82. See *id.* § 103.22(a).

83. See generally *id.* § 103.47-.49.

84. Note, *supra* note 77, at 435.

transactions conducted through foreign financial institutions in secrecy jurisdictions has not been as fruitful.⁸⁵ Ineffectiveness results from its character of voluntary disclosure of information. Effective enforcement is possible only in jurisdictions where U.S. Government agencies have access to records.⁸⁶ Since U.S. officials are unable to obtain information in those nations where bank secrecy laws are maintained, violations of the act are difficult to establish or prosecute.⁸⁷

In addition to use of the BSA, U.S. authorities have sought disclosure of information through extraterritorial application of Rule 10b-5 of the Securities and Exchange Act of 1934⁸⁸ and Rule 37 of the Federal Rules of Civil Procedure (FRCP Rule 37).⁸⁹ Rule 10b-5, which was enacted to enable prosecution of fraudulent dealings in the U.S. securities exchange,⁹⁰ is also applicable to foreign banks who transact business in U.S. markets.⁹¹ When information concerning the transaction is requested pursuant to Rule 10b-5, the foreign bank avoids compliance where the acts of disclosure might subject them to criminal liability in their own country.⁹² Unable to obtain the requested information, the SEC will seek a court order compelling discovery under FRCP Rule 37.⁹³ Under such circumstances, a court must balance the interests at stake.⁹⁴ In *SEC v. Banca della Svizzera Italiana (St. Joe's)*⁹⁵ the Southern District Court of New York applied such an approach.

In *St. Joe's*, prior to the announcement of a take-over bid for St. Joe Minerals Corporation, there were various large transactions in their common stock.⁹⁶ The Swiss bank involved in the transactions refused to provide needed information, and the SEC filed a motion to compel production of the requested information.⁹⁷ The

85. *Id.*

86. *Id.* at 435-36.

87. *Id.* at 436.

88. See 17 C.F.R. § 240.10b-5 (1986) (promulgated under the Securities and Exchange Act of 1934, 15 U.S.C. § 78j (1983)).

89. FED. R. CIV. P. 37.

90. See 17 C.F.R. § 240.10b-5.

91. See *SEC v. Banca della Svizzera*, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144 (S.D.N.Y. 1981) (*St. Joe's*) (where jurisdiction over the foreign bank was based on its doing business in the United States).

92. *Id.*

93. See *id.*; see also FED. R. CIV. P. 37.

94. See *supra* notes 56-58 and accompanying text.

95. [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144 (S.D.N.Y. 1981).

96. *Id.*

97. *Id.*

Federal District Court granted the SEC's motion and ordered the bank to disclose the customers' identities or suffer substantial sanctions.⁹⁸

Employing the Restatement of Foreign Relations Law,⁹⁹ the district court balanced the vital national interests at stake, the hardship which would be imposed by the decision, and the good faith of the parties.¹⁰⁰ The court concluded that "[i]t would be a travesty of justice to permit a foreign company to invade American markets, violate American laws . . . withdraw profits and resist accountability for itself and its principals . . . by claiming their anonymity under foreign law."¹⁰¹ With a balancing decision favoring U.S. interests,¹⁰² the bank obtained a waiver from its customer and produced the requested information.¹⁰³ Unfortunately the success of this action is not indicative of all such cases where courts are often hesitant to apply only U.S. law.¹⁰⁴

B. TREATIES OF MUTUAL ASSISTANCE

In addition to the Swiss and U.S. Memorandum of Under-

98. *Id.* at 92,149.

99. RESTATEMENT (SECOND) FOREIGN RELATIONS LAW § 40 (1965), provides:

Limitations on Exercise of Enforcement Jurisdiction,

Where two states have jurisdiction to prescribe and enforce rules of law and the rules they may prescribe require inconsistent conduct upon the part of a person, each state is required by international law to consider, in good faith, moderating the exercise of its enforcement jurisdiction, in the light of such factors as: (a) vital national interests of each of the states, (b) the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person, (c) the extent to which the required conduct is to take place in the territory of the other state, (d) the nationality of the persons, and (e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.

Id.

100. *St. Joes*, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,148-49.

101. *Id.* at 92,149.

102. *Id.*

103. *Senate Hearing*, *supra* note 1, at 324 (statement of John M. Fedders).

104. *See Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9 (1971). The Supreme Court, in reviewing the ability of the United States to gain jurisdiction in a trade dispute contrary to a forum-selection clause (choosing the London Court of Justice as the forum for dispute resolution) in the trade contract, stated:

The expansion of American business and industry will hardly be encouraged if . . . we insist on a parochial concept that all dispute must be resolved under our laws and in our courts We cannot have trade and commerce in world markets and international waters exclusively in our terms, governed by our laws, and resolved in our courts.

Id.

standing, other negotiated solutions exist.¹⁰⁵ Recently the United States and Cayman Islands signed a mutual legal assistance treaty, the result of three years of negotiations.¹⁰⁶ This is the first such treaty signed with a Caribbean island, an area traditionally known for its secrecy jurisdictions.¹⁰⁷ The treaty anticipates mutual assistance in the investigation and prosecution of acts that are criminal offenses in both countries.¹⁰⁸ Despite advantages gained by both countries, some have stated that the treaty was a result of coercive fines imposed by the United States.¹⁰⁹ Similar treaties are currently in negotiation with other Caribbean islands¹¹⁰ and are also expected to be concluded.

The crimes covered under the Cayman Islands Treaty are extensive.¹¹¹ Not only viewed as a positive step in the Caribbean for the United States, Cayman Islands officials also view this as a benefit.¹¹² Under the terms of the agreement, United States and Cayman Islands officials will cooperate in providing bank, business and government records; the taking of testimony and deposing of witnesses; searches and seizures of evidence; and the transferring of individuals into custody.¹¹³ In recognizing that criminal activity results in international repercussions, countries with bank secrecy laws have been willing to cooperate where their best interests are

105. See *infra* note 106.

106. *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2; see Treaty Relating to Mutual Legal Assistance in Criminal Matters, June, 1986, United States-United Kingdom of Great Britain-Northern Ireland, reprinted in ____ I.L.M. ____ (1986) [hereinafter Cayman Islands Treaty]. The treaty is to be ratified by early 1987. See also Pasztor & Nazovio, *U.S. Will Gain Access to Bank Records on Cayman Islands Under New Treaty*, Wall St. J., July 3, 1986, at 5.

107. See *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col 2; see, e.g., TAX HAVEN INFORMATION BOOK, *supra* note 15. This list shows the relative number of Caribbean Islands involved compared to other areas.

108. See *supra* note 106.

109. *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2. The treaty was signed after a U.S. court began imposing huge fines on the U.S. branches of banks whose affiliate operations in the Cayman islands had refused to cooperate with U.S. investigators. *Id.*

110. *Id.* Stephen S. Troth, head of the Justice Department Criminal Division, has indicated that similar agreements with Jamaica, and Turks and Caicos Islands, the Virgin Islands and Bahamas will be reached. *Id.*

111. Pasztor & Nazovio, *supra* note 106, at 5. A senior Justice Department official stated "the crimes covered by the treaty are nearly all encompassing, and it will greatly help prosecutors gather evidence in many more cases". *Id.*

112. *Id.* Peter Tomkins, president of the Cayman Islands Bankers Association stated, "[t]his agreement may frighten some people away [from doing business in the islands], but probably those are the people we want to frighten away." *Id.*

113. *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2; see Cayman Islands Treaty, *supra* note 106, art. I.

also served.¹¹⁴ Though a sign of cooperation, treaties often prove to be an unwieldy and frustrating means of prosecution for the SEC.¹¹⁵

A classic example of the inefficiency of using treaties as prosecution tools is the case of *SEC v. Certain Unknown Purchaser (Santa Fe)*.¹¹⁶ In *Santa Fe*, there were various transactions in the common stock of the Santa Fe International Corporation, immediately prior to the public announcement of their merger with the Kuwait Petroleum Corporation.¹¹⁷ Various Swiss banks purchased the securities on behalf of their undisclosed customers and subsequently refused to divulge their names.¹¹⁸

The SEC request for information was first made in early 1982, under the Treaty of Mutual Assistance in Criminal Matters between the United States and Switzerland.¹¹⁹ The request was denied by the Swiss Federal Tribunal in early 1983.¹²⁰ The SEC continued to litigate the case, and based on additional information again filed a request for assistance on July 27, 1983.¹²¹ The request was granted by the Swiss Tribunal on May 26, 1984,¹²² and the SEC was given the names of the unknown purchasers.¹²³ The Tribunal's decision was then appealed to several political bodies with jurisdiction over the matter, and the SEC was prevented from obtaining further documentary evidence with respect to the purchasers.¹²⁴ Finally on February 20, 1985, almost three years after their initial request, the SEC announced that the Swiss Federal Council had cleared the way for their long sought after documents and testimony.¹²⁵ This case illustrates the burdensome process that inhibits the SEC in its acquisition of necessary information through ne-

114. *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2. Stephen S. Troth, head of the Justice Department Criminal Division, stated, "[a]ll crime has taken on an international dimension and I think these countries realize it is in their best interest to discourage it within their borders". *Id.*

115. *See infra* notes 119-26 and accompanying text.

116. *SEC v. Certain Unknown Purchasers*, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,951, at 90,750 (S.D.N.Y. 1985) (*Santa Fe*).

117. *Id.*

118. *Id.* at 90,751. The request was initially filed with the Swiss banks on March 22, 1982. *Id.*

119. *Id.*; *see Swiss Treaty*, *supra* note 68.

120. *Santa Fe*, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,951, at 90,751. The request was denied on January 26, 1983.

121. *Id.* at 90,751.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* The Swiss Federal Council was the last body with jurisdiction over the matter.

gotiated treaties.

Although methods of disclosure exist, they are often lengthy¹²⁶ and not uniformly applied.¹²⁷ Something must be done to overcome problems in obtaining disclosure. Cases like that of Dennis Levine serve to destroy our "vital national interest in maintaining the integrity of the securities markets."¹²⁸ Much more is at stake than the \$12.6 million hidden by Levine,¹²⁹ the entire future of the securities exchange is at issue.¹³⁰

VI. A NEEDED UNIFORM APPROACH

A. FURTHER TREATIES OF MUTUAL ASSISTANCE

One possible solution is continued negotiation of treaties with secrecy jurisdictions. Treaties such as that recently executed with the Cayman Islands,¹³¹ allow for mutual assistance and a fairly effective route for U.S. authorities to gather information on inside traders.¹³² Foreign secrecy laws should not be given extraterritorial effect to circumvent investigations of transactions that occur in the United States.¹³³ Foreign nations should recognize that it is the account holder's choice to engage in conduct within the United States and outside the jurisdiction of the secrecy country.¹³⁴ Secrecy jurisdictions and those who trade through them, must understand that the act of trading securities outside the territory of the secrecy jurisdiction constitutes a waiver of any applicable secrecy provisions.¹³⁵

The U.S. Supreme Court has held that a defendant will be found to have submitted to the jurisdiction of a state when the defendant "purposefully avails itself of the privilege of conducting activities within the foreign state, thus invoking the benefits and protections of its laws."¹³⁶ By conducting a securities transaction in the United States, a foreign financial institution and its customers

126. See *supra* notes 119-24 and accompanying text.

127. See *supra* notes 101, 104 and accompanying text.

128. See SEC v. Banca della Svizzera, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144 (S.D.N.Y. 1981) (*St. Joe's*).

129. See *supra* note 21.

130. See *infra* notes 175, 178-79 and accompanying text.

131. See Cayman Islands Treaty, *supra* note 106.

132. See *generally id.*

133. *Senate Hearing, supra* note 1, at 322 (statement of John M. Fedders).

134. *Id.*

135. *Id.*

136. *Id.* at 321 (citing *Shaffer v. Heitner*, 433 U.S. 186, 213-16 (1977); *Hanson v. Denckla*, 357 U.S. 235, 253 (1957)).

deliberately avail themselves of the privilege of conducting activities here, and "invoke the benefits and protection" of the U.S. securities markets and of U.S. law.¹³⁷ It seems they should also accept the responsibilities associated with the exercise of this privilege.¹³⁸

The use of negotiated treaties appears consistent with the principle of international comity.¹³⁹ It extends due respect to the sovereignty and laws of nations with secrecy statutes,¹⁴⁰ but also provides a basis for vindicating the sovereignty of the United States and the integrity of its security markets.¹⁴¹ The basic deterrent to a continuance of this approach is the sometimes cumbersome procedure encountered in obtaining information.

B. CFTC AND A PRETRADING DISCLOSURE SYSTEM

The best solution is a pretrading disclosure system, whereby any foreign institution trading in the U.S. securities market must agree to divulge requested information prior to trading. Failure to comply with these preexecution provisions would result in the disallowance of further financing in U.S. markets. To best explain, it is helpful to examine an analogous program presently employed by the Commodity Futures Trading Commission (CFTC).¹⁴²

The CFTC conditions access to the U.S. futures markets upon a willingness to provide information prior to trade execution, in response to a specific request of the CFTC.¹⁴³ The rules require that futures commission merchants provide the name, address and certain information concerning the holder, or beneficial holder of an open futures contract in response to such a special request and on the account's first day of trading.¹⁴⁴ The CFTC's special call provisions avoid many of the problems inherent in effective service of process upon a resident of another country, such as a bank in a secrecy jurisdiction.¹⁴⁵ Examining an attempted inside trader pros-

137. *Senate Hearing*, *supra* note 1, at 321 (statement of John M. Fedders); *see supra* note 136.

138. *Senate Hearing*, *supra* note 1, at 321 (statement of John M. Fedders).

139. *Id.* at 322; *see also* BLACK'S LAW DICTIONARY 242 (5th ed. 1972). Under the doctrine of comity, a state is asked to honor a judgment of a foreign country. Comity is not a rule of law, but one of practical convenience and courtesy. *Id.*

140. *Senate Hearing*, *supra* note 1, at 322 (statement of John M. Fedders).

141. *Id.*

142. *See infra* notes 156-69 and accompanying text.

143. *See infra* notes 158-61, 167-68 and accompanying text.

144. *See* 17 C.F.R. §§ 17.01(b)(1)(2)(4), 21.03(c)(1) (1986).

145. *Senate Hearing*, *supra* note 1, at 322 (statement of John M. Fedders).

ecution would provide the best means of illustrating the benefits of adopting a system similar to that utilized presently by the commodities futures exchange.

Utilizing methods presently available,¹⁴⁶ upon suspecting inside trading activity, the SEC would attempt to trace the source of the transaction. If the trade were found to have been executed through a foreign bank for an anonymous account, a requested disclosure of the account holder would likely occur.¹⁴⁷ Assuming the customer refused to consent to the bank's disclosure, the bank would not reveal the account's holder, pursuant to the jurisdiction's secrecy laws.¹⁴⁸ At this point, the SEC would make an attempt to exercise jurisdiction over the matter¹⁴⁹ and extraterritorially apply the requirements of U.S. securities law.¹⁵⁰ A probable stalemate would result when U.S. law runs counter to the basis of foreign secrecy laws.¹⁵¹ Even if a treaty existed based on mutual assistance,¹⁵² expedience in the prosecution of the inside trader is not likely.¹⁵³

If a system similar to that employed by the CFTC were adopted by the SEC, necessary information would generally be available to enforcement authorities at the time of the suspected violation.¹⁵⁴ On the initial day of trading for any new account, the bank in a secrecy jurisdiction, acting as a "foreign broker"¹⁵⁵ for an anonymous account, must file a report with the SEC.¹⁵⁶ Before trading could occur, the bank would have to inform the account holder of specific requirements under any applicable provisions.¹⁵⁷

146. See, e.g., *supra* notes 14, 77, 88, 89 & 106.

147. See, e.g., SEC v. Banca della Svizzera, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144 (S.D.N.Y. 1981) (*St. Joe's*).

148. See *U.S. and Caymans Sign Crime Pact*, *supra* note 14, at D10, col. 2. If the bank makes an unauthorized disclosure, civil and criminal liability can attach. See also *supra* note 40.

149. See generally *supra* note 54.

150. *Id.*

151. See, e.g., *St. Joe's*, [1981-1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,346, at 92,144. Prior to the SEC's request for an application of FRCP Rule 37, the SEC had failed in their attempted application of Rule 10b-5.

152. See Memorandum, *supra* note 14, at 1; Cayman Islands Treaty, *supra* note 106.

153. See generally SEC v. Certain Unknown Purchasers, [1984-1985 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 91,951, at 90,750 (S.D.N.Y. 1985) (*Santa Fe*).

154. See *infra* notes 158-61 and accompanying text.

155. 17 C.F.R. § 15.00(a)(1) (1986). "Foreign broker" means any person located outside the United States or its territories who carries an account in commodity futures . . . for any other person. *Id.*

156. See *id.* § 15.01(b).

157. See *id.* § 15.05(c).

When reported for the first time, the foreign broker would provide the name and address of the account holder,¹⁵⁸ the number assigned to the account,¹⁵⁹ and the business or occupation of the account holder,¹⁶⁰ among other information.¹⁶¹ The account for which the bank was trading would have a "unique designator,"¹⁶² through which the SEC could identify the account and maintain all the necessary information.¹⁶³ Without the foreign broker's knowledge of these requirements, it would be unlawful to enter into any transactions.¹⁶⁴ Besides initial requirements, the bank would be required to submit a report of the daily activities, such as the quantities in each security traded, for each business day the account traded.¹⁶⁵

If upon examining trading activity, a particular day's trading appeared suspicious, the SEC could make a "special call" for further information on an account of a foreign broker.¹⁶⁶ The foreign broker (bank) must then provide the SEC with the specified information.¹⁶⁷ If the SEC was unsatisfied with the response, or the secrecy bank failed to respond at all, the Commission would be empowered to prohibit the execution of further trades for that account.¹⁶⁸ If the foreign bank or account holder felt they were treated unfairly, they would have the option of requesting a hear-

158. *Id.* § 17.01(b)(1).

159. *Id.* § 17.01(b)(2).

160. *Id.* § 17.01(b)(4).

161. *See generally id.*

162. *See infra* note 163.

163. 17 C.F.R. § 17.01(a). "For the purpose of reporting futures information . . . each . . . foreign broker shall assign a unique designator to each special account and shall report such account only by such designator . . . [T]he designator used shall be numeric . . . [and] shall not be changed or assigned to another account without prior approval of the Commission." *Id.*

164. *Id.* § 15.05(c). "It shall be unlawful for any futures commission merchant . . . to open a futures . . . account . . . or cause to be affected transaction . . . unless the futures commission merchant . . . informs the foreign broker prior thereto, . . . the requirements of this section." *Id.* § 21.03(b).

165. *Id.* § 17.00(a).

166. *Id.* § 21.03(c). "Upon a determination by the Commission that information concerning accounts may be relevant information in enabling the Commission to determine whether the threat of a market manipulation, . . . or other market disorder exists . . . the Commission may issue a call for information from a futures commission merchant or customer . . ." *Id.*

167. *Id.* § 21.03(e). For information that may be specifically requested, *see id.* § 21.03(c)(1)(i)-(v).

168. *Id.* § 21.03(f). "If the Commission has reason to believe that a futures commission merchant or customer has not responded as required to a call . . . the Commission in writing may . . . prohibit the execution of . . . trades on . . . the behalf of the futures commission merchant or customer named in the call . . ." *Id.*

ing at which point evidence could be offered to show the inappropriateness of the SEC's request.¹⁶⁹

Under a system similar to the CFTC's, the SEC would have the information concerning an account in a secrecy jurisdiction on the initial day of trading and on every day the account was active.¹⁷⁰ Before trading could occur, the account holder would be notified of all requirements that would need to be met.¹⁷¹ Upon suspecting fraudulent activity, the SEC would possess a mechanism through which it could acquire further information.¹⁷² If such information was not obtained, the SEC could prevent further trading for that account.¹⁷³ Extraterritorial concerns would essentially be eliminated. Any account which desired to trade in U.S. security markets through a financial institution in a secrecy jurisdiction would have to disclose its true beneficiary on the first day trading occurred or forego trading at all.¹⁷⁴

Under the present system of SEC inside trading disclosure and enforcement, the "integrity of the securities industry" is questionable.¹⁷⁵ It was noted by the Chairman of the House Energy and Commerce Committee that the securities industry was failing in its duties as the "first line of defense" against securities fraud.¹⁷⁶ Something must be done to boost the integrity of the U.S. securities markets. No system or mechanism employed by the SEC has yet proved effective in deterring the inside trader or in providing for speedy detection and prosecution after any fraudulent activity. A working system exists in the commodity futures market. The SEC should adopt a similar system which would both provide greater deterrence to the inside trader and easier access to information for the SEC. "Only (the SEC) can save (themselves)"¹⁷⁷ If the integrity of the securities industry is lost, then the

169. *Id.* § 21.03(g).

170. *See supra* notes 158-61, 165 and accompanying text.

171. *See* 17 C.F.R. § 15.05(c).

172. *See supra* note 166 and accompanying text.

173. *See supra* note 168 and accompanying text.

174. *See supra* notes 158-61, 165 and accompanying text.

175. *Dingell is Unable to Heap Any Praise on Securities Sector*, Wall St. J., Mar. 6, 1987, at 3. The Chairman of the House Energy and Commerce Committee, Representative John Dingell in addressing the Securities Industry Association stated, "[t]his is not a speech in praise of the integrity of the securities industry, dismissing you to go off to cocktails . . . [t]hat speech would be the equivalent of a father turning the keys of his shiny new Porsche over to a son who had over the last three weeks totalled the family wagon and RV, flunked two courses and broken curfew every other night." *Id.*

176. *Id.*

177. *Id.*

strength of the securities market faulters.¹⁷⁸ No one “want[s] to preside over a repeat of 1929.”¹⁷⁹

VII. CONCLUSION

Inside trading accounts for billions of dollars¹⁸⁰ of lost funds. This problem is further augmented by the “insiders” use of financial institutions in bank secrecy jurisdictions. As apparent through examining the Dennis Levine case and information on recent foreign investment in U.S. markets, this problem appears to be intensifying. Hampered by extraterritorial concerns, U.S. enforcement authorities require a means to circumvent the secrecy barriers.

Attempts to break these barriers have been made and proved successful but burdensome in Switzerland and the Cayman Islands.¹⁸¹ Although many solutions have been proposed and tried, a uniform approach to the evasion of domestic securities laws must be formulated and adhered to universally. A pretrading disclosure requirement system has been tried and proven in the commodities future exchange.¹⁸² SEC adoption of this approach could prove to be the only way that fraudulent securities transactions can be curtailed.

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178. *See id.*

179. *Id.*

180. *See Senate Hearing, supra* note 1, at 320.

181. *See supra* notes 14, 106 & 119-25 and accompanying text.

182. *See supra* notes 155-69 and accompanying text.