Brokers' Disclosure of
Market-Maker Status

March 17, 1971

To Our Clients:

Previously we called your attention to the case of Chasins v. Smith, Barney & Co. in which the court held that the failure of Smith, Barney to disclose to its customer, Chasins, that it was acting as a market-maker with respect to securities it recommended to Chasins was in violation of Rules 10b-5 and 15c1-4 under the Securities Exchange Act and that Chasins therefore could recover the losses he had suffered as a result of the subsequent decline in market price of those securities. We advised that appropriate disclosure be made on all confirmations to retail customers of securities for which you make a market or with respect to which you are very active in the market.

On March 2 the United States Court of Appeals for the Second Circuit withdrew its previous opinion in Chasins v. Smith, Barney & Co. and, in effect, limited its holding to situations where the market-maker broker is specifically advising the customer as to the transaction in the market-maker security. Thus, the case now stands for the proposition that in recommending purchase or sale of securities a market-maker broker must disclose that fact in order to avoid violation of Rule 10b-5.

The rules of the New York Stock Exchange, Rule 473 (¶2474A.10) and the NASD, Interpretation by the Board of Governors of Article III, Section 1, require that all sales literature and market letters disclose market-making activities and positions in securities discussed. Care should be taken that the same standards are followed with respect to individual recommendations, both written and oral.

The SEC is presently considering the adoption of rules with respect to disclosure of market-making activities. Pending adoption of such rules, it is recommended that the foregoing NYSE and NASD standards be followed in all individual oral and written recommendations. It is also recommended that confirmations of trades in market-maker securities continue to disclose market-maker status.

A copy of the opinion in Chasins v. Smith, Barney & Co. is attached.