

March 13, 1972

To Our Clients:

At a dinner meeting of the New York City Bar Association Securities Regulation Committee on Friday, Chairman Casey made the following unofficial statements:

(1) The replacement of Rule 133 will be proposed for comment before being adopted.

(2) The SEC is proposing legislation to reverse the Supreme Court decision in Reliance Electric v. Emerson Electric that a 10% beneficial holder can sell sufficient shares to reduce below 10% and then sell the balance without having the second sale subject to § 16(b) short swing liability.

(3) The SEC will push strongly the Williams' Bill giving the SEC complete jurisdiction over all aspects of securities transfers.

(4) The SEC will propose legislation to meet the Rosenfeld v. Black (Lazard Fund) problem by providing that advisory agreements can be transferred for whatever consideration the parties negotiate if

- (a) the new contract is for an initial one-year term
- (b) the new contract is not less favorable to the fund than the old
- (c) upon effectiveness of transfer all the directors of the fund are disinterested and that a fully disinterested board will continue for at least 5 years
- (d) shareholders approve.

March 13, 1972

(5) Within 30 days the SEC will propose a uniform rule for all the stock exchanges to preclude institutional recapture-affiliate members and permit membership by institutional affiliates who do a predominant part of their business with the public. (Mr. Casey expressed strong objection and personal distaste for institutional recapture and lowering the breakpoint for negotiated commissions; he considers this "nickel and dime stuff" compared to getting the best price execution). If the exchanges don't quickly adopt the new rule, the SEC will commence expedited 19(b) proceedings. Mr. Casey recognizes the litigation exposure institutions must face in the interim, but feels that the institutions are overreacting and should decide on a business judgment basis. (Note that Senator Williams is today introducing a bill prohibiting changes in the exchanges' rules on institutional access after the breakpoint on negotiated commission is at \$100,000 for one year.)

(6) The SEC will shortly propose a rule covering private placements for the purpose defining to whom private placements can be made and generally removing the uncertainty created by the SEC brief in the Continental Tobacco case.

(7) The SEC will propose that market studies and budgets be included in start-up company registration statements. The SEC is moving closer to requiring estimates and projections

(8) Mr. Casey does not favor substituting the SEC for the Accounting Principles Board. He favors a permanent Accounting Principles Board with SEC oversight.

(9) Mr. Casey envisages the market of the 1980's to be completely electronic with electronic securities transfer. He doesn't say that this necessarily does away with the need for exchanges, but he recognizes this as a distinct possibility.

M. Lipton