

October 23, 1972

To Our Clients

Investment Advisers.

In a recent speech SEC Commissioner Owens stated that the SEC contemplates broadening its regulation of investment advisers in the areas of testing the qualifications of persons desiring to become advisers; requiring minimum net capital and working capital ratio to assure financial responsibility; requiring periodic financial reports from advisers; proscribing conflicts of interest; and fidelity bonding for client protection.

In what appears to be a reversal of the trend of recent staff rulings, in John D. Ames, Jr. and Bacon Whipple & Co., available 10/12/72, BNA SRLR No. 173, p. C-1, the Division of Investment Company Regulation has approved a related adviser and broker discretionary account investment advisory arrangement where there are between 50-100 accounts; the minimum account is \$100,000; each account has the same investment objective; solicitation is by the adviser and not the broker; no use is made of a model or control account; and some "individual" attention is given to each account.

Rule 144

International Systems and Controls Corporation, available 10/16/72, rules that tacking is permitted where restricted securities are exchanged for a different class of securities of the same issuer in a voluntary exchange exempt from registration under Section 3(a)(9) of the 1933 Act on the theory that the exchange constitutes a recapitalization under Rule 144 (d)(4)(A).

Short Selling before an Underwriting.

Release 33-5323 reflects the SEC position that it is a violation of the fraud and antimanipulation provisions for underwriters to arrange with buyers to short a security before an underwriting and then cover by purchasing part of the offering; for persons to short before an offering for the purpose of depressing the market price and thereby reduce the offering price and enable the short position to be covered at an artificially lower price; and for persons with a preexisting short position to agree to purchase on an underwriting where the offering is cold. This appears to be an area of major concern to the SEC at this time. Brokers would be well advised to avoid participation in the foregoing types of short sales.

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