

January 15, 1973

To Our ClientsRecent Developments

1. Annual Reports and Accounting Matters. The SEC Advisory Committee on Industrial Issuers has recommended that the SEC proxy rules be amended to require that annual reports to shareholders include:

- (a) a brief description of the business;
- (b) line of business disclosures;
- (c) five-year summary of earnings;
- (d) explanatory comment on material changes in financial condition and results of operations, including comments on changes in discretionary expenses such as r&d, advertising and pension contributions, impact of competitive factors, material litigation and tax changes;
- (e) disclosure of principal accounting policies and changes therein;
- (f) identification of management, principal occupation of outside directors and comment on changes in management or control; and
- (g) no chart, graph, etc. that is misleading.

Although this proposal, as well as similar proposals of the SEC with respect to discretionary expenses, accounting policies and tax matters, have not yet been enacted, they not only indicate what the rules will be, but the standards likely to be applied by the courts even in the absence of rules. We recommend that these standards be followed in preparing this year's reports and that the basic philosophy underlying the SEC's proscription of "creative accounting" be taken into account in all matters.

2. Pooling of Interests and Bailouts. ASR 130 has been revised to state that the SEC will accept pooling treatment of an acquisition if no affiliate (control person) of either company sells common stock received on the acquisition until financial results covering at least 30 days of post-acquisition operations have been published. It is now clear that an S-14 can cover post-closing resales without destroying the pooling. In order to protect pooling treatment acquisition agreements or ancillary instruments should contain covenants of control persons not to sell for the requisite period.

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3. Rule 144. An institutional investor or other person who owns 10% or more of any class of equity securities of a company is considered one person with such person for the purpose of Rule 144, and, therefore, the institutional investor would have to inquire of all companies in which it holds such 10% interest to determine if any of them had or plan transactions in a security the institution wishes to sell under Rule 144.
4. Form S-16. Form S-16 has been amended to provide specifically for underwritten offerings.
5. Broker Capital Requirements. The SEC proposal (SEA Release No. 9891, Dec. 5, 1972) to amend its net capital rule and have it apply to all brokers, including exchange members other than specialists who do not deal with the public, will, if adopted in its present form, make major changes that may require certain brokers to have substantially greater capital than heretofore required. It is again suggested that the proposal be studied carefully. The comment period expires March 5, 1973.

The SEC has published an interpretation of the broker reserve requirements of new Rule 15c3-3 which becomes effective today.

The FRB has proposed an amendment to Reg. T to reduce from 35 to 15 the number of days for settlement of COD trades.

6. Discretionary Accounts. A senior staff member of the SEC has questioned the legality of a broker selling as principal to a discretionary account securities for which the broker is a market maker or is distributing in an underwriting. Although certain SEC rules and releases seem to contemplate such transactions and they are generally done by most firms in the industry without question, the staff member is highly respected and his comment may indicate a new attitude on the part of the SEC. In any event this is an appropriate time to review all discretionary account authorizations to be sure that they specifically provide that the broker may deal with the account as a principal

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in the aforementioned situations, if in fact such transactions are intended. It is a good practice to obtain annual confirmation of discretionary account arrangements in correspondence that clearly discloses all conflicts and specifically refers to the risks of the particular investment objective of each account.

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