

April 2, 1973

To Our Clients:

Central Market - Institutional Membership. The proposals have become so numerous and so diverse, that it is not possible to predict the outcome. It is clear that a disinterested study of all aspects, rates, membership, market structure, etc., and their interrelationship is necessary.

Tender Offers. The Second Circuit's opinion in the Piper Aircraft case holds that an unsuccessful tender offeror has a 14(e) cause of action against the target company and the successful tender offeror. The court also holds that the dealer-manager of the exchange tender offer by the successful offeror has 14(e) liability to the unsuccessful offeror for material misstatements in the registration statement. The opinion implies that in any tender offer, cash or exchange, the named dealer-managers have a due diligence responsibility for the disclosures required by 14(d) and the rules thereunder. The form of dealer-manager tender offer agreement should be reviewed in light of this opinion.

NASD Underwriting Rule Proposals. Responding to the SEC Hot Issue Release of July 26, 1972 the NASD has proposed that (1) underwriters adopt written due diligence standards (including 16 specified items) and the managing underwriter certify to the syndicate and/or selling group that it has established and followed adequate due diligence procedures, (2) in recommending promotional underwritings (less than one year companies or companies without profit in at least one of last two years) the dealer make a suitability inquiry and determination and preserve a written record thereof and (3) investment bankers have a "Qualified Underwriting Principal" in their employ. The comment period expires April 13, 1973.

Cash Flow Reporting. As previously noted, ASR No. 142, 3/15/73, prohibits the use of cash flow per share information not only in filed disclosure documents, but in annual reports and other shareholder reports that are not filed with the SEC. ASR 142 also prohibits per share reporting of any data other than net income, net assets (book value or net worth) and dividends. Cash flow and similar information may be presented in the context of a full explanation of the data presented and as a supplement to conventional financial statements. Essentially ASR 142 relegates cash flow reporting to the source and application statements.

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Use of Brokerage for Research. A recent no action letter fails to rationalize the investment adviser's duty to obtain best price and execution with the SEC February 2, 1972 Future Structure statement that brokerage can be used for research. The letter suggests that until rationalization, disclosure will suffice. It is good practice to review disclosure in this area at this time.

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