

To Our Clients

Recent Developments

1. Institutional Membership - Fixed Commissions - Central Market. The Treasury Department, and for all practical purposes, the Administration, has through a speech by Secretary Shultz taken the following positions:

(1) institutions should be eligible for exchange membership but on a conflict of interest rationale proscribed from doing brokerage for affiliated accounts -- full 100-0 proscription rather than the 80-20 test of Rule 19b-2,

(2) fixed commissions should end in April 1975, and

(3) the central market should include competition in listed securities between the exchanges and the third market -- the NYSE plea for exchange exclusivity of trading in listed stocks is rejected but the concepts of substantially equal regulation and the auction market are endorsed.

With the Administration now in substantial agreement with the Williams and Moss Committees and the SEC apparently in disagreement only on the 100-0 or 80-20 question, it would appear that the pending legislation will be enacted. The only remaining questions are whether private individual discretionary accounts will continue to be treated as nonaffiliated, the phase-in period for institutionally affiliated brokers to achieve 100-0 and the degree of exchange-type regulation of the third market. As to the latter the NYSE seems to be making progress with the Congressional committees.

2. SEC Refusal to Review Staff Position not Reviewable. Kixmiller v. SEC, CCH ¶ 94,378 (D.C. Cir. Jan. 30, 1974) holds that SEC refusal to review Staff action does not constitute administrative action subject to judicial review. The Medical Committee case is distinguished on the ground that there the SEC itself reviewed and approved the Staff position.

3. SEC Hearings on Variable Life Rules. The question of conditioning the 1940 Act exemption for variable life on state regulation providing protection similar to the 1940 Act and the adequacy of the NAIC model regulations will be the subject of hearings on March 4, with statements of witnesses due February 25. IC Rel. No. 8216 (Jan. 31, 1974).

4. Rule 144. SA Rel. No. 5452 (Feb. 1, 1974) amends, effective March 15, 1974, Rule 144 to permit market-makers to continue to quote a two-sided market while selling 144 securities, to permit brokers to inquire of customers who have indicated an interest within the past 10 business days and to provide that the current information requirement is satisfied if the issuer has been subject to the reporting requirements for at least 90 days and has filed all reports required to be filed during the past 12 months (instead of all past reports), with the 1934 Act reporting forms amended to conform to this change. Our Rule 144 memo is being revised to reflect these changes and recent interpretations. It will be distributed shortly.

5. IET and FDI Controls Ended January 29, 1974. While the tax has been reduced to zero and all the controls, including the voluntary guidelines, have ended, the Treasury will continue to require reports.

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