

To Our Clients

Recent Developments

1. Rule 10b-5; Repurchase of Securities; Projection of Earnings. Harkavy v. Apparel Industries, Inc. CCH ¶ 94,532 (S.D.N.Y. Apr. 25, 1974) is a face-to-face private company repurchase case in which the repurchase took place early in the turnaround year after two years of losses and the plaintiff subsequently alleged a 10b-5 violation for failure to disclose that the company was about to turnaround. The court said: "An insider is not required to volunteer any economic forecast". This holding is questionable and should not be relied on, particularly in cases where the repurchasing company has "budgeted" a turnaround or materially better profits.

2. Definition of Security; Installment Payments on Tax Shelters. Ingenito v. Bermec Corp. CCH ¶ 94,548 (S.D. N.Y. May 8, 1974) holds that for 10b-5 purposes each payment on cattle herd maintenance contract constitutes the sale of a new security (using the analogy to assessable stock as the basic rationale), but that the installment payments on a note given in payment of the cattle herd are not new securities. Query application of this holding to the registration requirements of the 1933 Act; the court here using language implying that it saw no distinction.

3. Rule 10b-5; Purchaser-Seller Requirement; Forced Seller Exception. Garner v. Pearson CCH ¶ 94,549 (M.D. Fla. Apr. 5, 1974) holds that the purchasers of time deposits in a plundered bank are "forced sellers" of the time deposits and therefore meet the purchaser-seller requirement of 10b-5. The opinion has clear support for the fundamental-change-in-investment exception which has generally been rejected.

4. Definition of Security; "Stock" of Company whose Assets are the Subject of the Sale. Accidental Life Insurance Co. v. Pat Ryan & Associates. CCH ¶ 94,551 (4th Cir. May 10, 1974) rejects the argument that where the real subject matter of the transaction was the assets of a private company, the fact that the transaction took the form of a sale of stock should not bring it within the federal securities laws.

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