

June 17, 1974

To Our Clients

Recent Developments

Definition of Security; Shares in Non-profit Housing Cooperative. In holding that shares in a nonprofit housing cooperative are "securities" the Second Circuit has adopted expressly the literal reading test for applying the federal securities laws. Accordingly, if you call it stock, it is stock and therefore a security. In addition, the Second Circuit found these shares to be investment contracts. The Court overcame the "nonprofit" aspect through a careful analysis showing that the tenant-shareholders "profited" through sharing commercial space rent income, the tax deduction pass through enjoyed by cooperative apartment owners and the "lower" rents expected through cooperative ownership. Forman v. Community Services, Inc., 171 N.Y.L.J. No. 115, p. 1, June 14, 1974 (2d Cir. June 12, 1974)

Small Private Placements. The SEC has proposed Rule 240 which would exempt from registration small offerings by small private companies. The conditions are:

- (a) No general advertising;
- (b) No remuneration for soliciting buyers;
- (c) No more than \$100,000 in any consecutive 12 months;
- (d) No more than 25 buyers;
- (e) No more than 50 beneficial owners of the issuer's securities before and after any sale under the rule; and
- (f) The issuer legend the securities and inform the buyers of the restrictions.

Rule 144 would be amended to permit sales of Rule 240 securities under 144.

Suspension of Trading; Foreign Markets.

A registered broker-dealer may not trade a 15(c)(5) suspended security in a foreign market where trading has continued following the SEC suspension. Inter-state Securities Corp. CCH ¶ 79,795 (Avail. Apr. 25, 1974).

Rule 144; Market Maker's Short Position; Market Making Can Continue While 144 Sales are Made from Investment Account. A market maker who holds restricted securities in his investment account may avail himself of Rule 144 and his holding period will not be affected by short positions in his trading account if the short positions are taken in the usual course of market making, do not have any relationship to the investment account position (other than that they are of the same class of securities), are not inconsistent in time or amount with the firm's normal market making practices and are not covered with the restricted securities (and the market maker can trace the certificates to establish that the investment account securities were not so used). Provided the market maker uses an independent broker for the 144 sales and guards against buying the shares from such broker, the market maker may continue its market making during the period the 144 sales are being made. Ag-MET, Inc., CCH ¶ 79,796 (Avail. May 2, 1974).

Rule 144; Sales Executed by Specialist for Customer. A stock exchange specialist who carries customer accounts cannot effect a 144 sale by purchasing as principal from a customer; such sales would not be "brokers' transactions" within 144(g)(1). Herzog & Co., CCH ¶ 79,801 (Avail. May 15, 1974).

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