

To Our Clients

Recent Developments

1. Minimum Commissions; Antitrust Review of Stock Exchange Rules. By affirming Gordon v. New York Stock Exchange, N.Y.L.J., July 8, 1974, p.1, col. 7 (2d Cir. June 28, 1974) the Second Circuit has stated its essential disagreement with the Seventh Circuit in the Thill case and has held that the Silver doctrine does exclude collateral court antitrust review of stock exchange rules -- such as the commission rate rules -- that have in fact been reviewed by the SEC under the express provisions of the 1934 Act.

2. Voting Trusts; 1933 Act and 1934 Act Registration and Compliance Requirements. Reserve Life Ins. Co. v. Provident Life Ins. Co., CCH ¶ 94,605 (8th Cir. June 21, 1974) contains a comprehensive review of the applicability of the 1933 and 1934 Acts to voting trusts. The extension of a voting trust -- in accordance with its terms -- may be considered a single continuing trust and therefore the exchange of extended voting trust certificates for the original voting trust certificates is within the 3(a)(9) exemption from 1933 Act registration for exchange offers by the issuer. Voting trust certificates are equity securities and the voting trustees are issuers for 1934 Act purposes and § 12(g) of the 1934 Act applies even though the underlying security deposited in the voting trust is that of an exempt insurance company (unless the voting trust itself is subject to state insurance company regulations). Solicitation of consent to an extension of a voting trust is within the proxy rules and § 14 of the 1934 Act applies.

3. Accountants; Proxy Statement Disclosure. The SEC proceeding against Whittaker Corp. and censure of Arthur Andersen for failure to disclose the full details of a claim by the company against its accountants to the SEC and in the company's proxy statement seeking ratification of the selection of the accountants, indicates that full disclosure is required of any fee adjustment or other settlement based on a claim by the company against the accountants for failure to perform properly, negligence or malpractice. The same would apply with respect to a law firm if a partner of the law firm was a nominee for director. Arthur Andersen & Co., CCH ¶ 79,900 (ASR No. 157).

M. Lipton