

To Our Clients

Recent Developments

- (1) Going Private. The SEC has lifted the ban on processing going private transactions and will hold hearings on proposed new rules to regulate such transactions. The proposals being considered by the SEC require disclosures of the type which have become general for this type of transaction. In addition, the SEC is considering requiring fairness opinions from two independent investment bankers. As an alternative the SEC is considering a requirement that the transaction be fair and have a valid business purpose. The SEC is also considering requirements that "future benefits" be considered in determining fairness and that the shareholders approve going private transactions.
- (2) Mutual Funds; Joint Transactions; Litigation. The settlement of litigation by a fund and its affiliate is a joint transaction within § 17(d) and therefore requires Rule 17d-1 approval of the SEC for the allocation of the settlement consideration. AB & Co., CCH ¶ 80,071 (Avail. Sept. 18, 1974).
- (3) Definition of Security; Money Market Instruments; Investment Company Act. CDs and commercial paper are securities for the purpose of the Investment Company Act. American Express Income Shares, Inc., CCH ¶ 80,074 (Avail. Nov. 14, 1974).
- (4) Exchange Offers; § 3(a)(9) Exemption; Broker acting as a Consultant. A broker who acts as a consultant for a fixed fee and advises as to the terms of an exchange offer, renders a fairness opinion and assists in the communication process is engaged in "soliciting" and therefore the § 3(a)(9) exemption is not available. Dean Witter & Co., CCH ¶ 80,078 (Avail. Dec. 23, 1974).
- (5) Rule 144; Current Public Information. Minor defects in a Form 8-K which the issuer cannot correct because of lack of cooperation by a third party do not result in a failure to comply with the current information requirement of Rule 144(c). First United Financial Corp., CCH ¶ 80,080 (Avail. Dec. 23, 1974).
- (6) Resale of Shelf Registered Securities Issued for Acquisitions. If the limitations of Rule 145(d) are followed (not including filing a Form 144) shelf registered shares issued in acquisitions may be resold by non affiliates of the issuer without registration in that the sellers would not be engaged in a "distribution" and therefore not "underwriters".

- (7) Condominiums; Exemption of Brokers from Credit Restrictions.
The SEC has adopted, effective March 3, 1975, Rule 3a12-5
exempting interests in residential property from the credit
arranging restrictions of §§ 7(c) and 11(d).

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