

To Our Clients

Recent Developments

1. Going Private. In the Concord Fabrics case the New York Supreme Court has granted a preliminary injunction to the Attorney General to stop a freeze-out cash merger as a violation of the New York Blue Sky Law. The Court conceded full disclosure. The opinion does not make clear whether the Court felt that all freeze-outs are per se violations or whether this particular freeze-out was bad. The Court referred to the following aspects of this freeze-out as "adding to the odium of the scheme": (a) the same insiders who took the company public in 1968 were taking it private, (b) the appraisal of the company's stock value was done by the investment banker son of a director of the company, (c) no real corporate purpose was demonstrated and (d) the company's credit would be used to pay for the shares being cashed out.

2. Rule 10b-5; Purchaser-Seller Requirement. The Supreme Court decision in the Blue Chip Stamp case last week laid to rest the question whether Rule 10b-5 applied in situations where the alleged damage was suffered by other than a purchaser or seller of securities. In Blue Chip Stamp the Court held that an offeree specified in an antitrust consent decree who had not purchased because of alleged misstatements in a prospectus was not within Rule 10b-5. The Court's opinion reflects a major change in attitude toward Rule 10b-5 and the proliferation of class actions premised on the Rule.

3. Broker-Dealers. The SEC has adopted new forms for the registration of broker-dealers. All broker-dealers will have to file the new registration form within 120 days after August 1, 1975.

M. Lipton