

October 11, 1978

To Our Clients

Williams Act; Beneficial Ownership;
Pledged Securities

Rule 13d-3(d)(3) provides that a bank or other institutional investor qualified to file Schedule 13G who in the ordinary course of business is a bona fide pledgee under a pledge agreement that does not grant power to vote or sell prior to default and that was not entered into for the purpose of influencing control, is not deemed the beneficial owner of the pledged securities. In The First National Bank of Chicago, CCH Fed. Sec. L. Rep. ¶ 81,734 (Avail. July 24, 1978) the staff of the SEC took the position that where a bank which had in the past used a form collateral note that granted voting rights prior to default undertook to the SEC that it would not exercise such voting rights prior to default, the bank would be considered to meet 13d-3(d)(3) and not be considered to be the beneficial owner of the securities pledged under such "old" notes.

M. Lipton