MEMORANDUM

September 7, 1983

TO: Dan Goelzer, General Counsel

FROM: Alan Rosenblat, Assistant General Counsel AR
Gerald Laporte, Special Counsel GL (AR)

RE: Securities Industry Association Recommendations to the Task Group on Regulation of Financial Services

Chairman Shad's memorandum of August 19, 1983, requests your views concerning the recommendations set forth in the SIA's August 3 letter to the Bush Task Group. Our comments on each of the SIA's eleven points appear below, along with an indication as to whether legislation would be required to implement each proposal. The advantages and disadvantages of each proposal and our recommendations are set forth below.

A. Summary

(1) Options Disclosure Documents (No legislation needed) -- SIA proposes single rather than multiple disclosure documents for options. We do not believe that the Bush Task Group should address this issue.

(2) The Racketeer Influenced Corrupt Organizations Act (Legislation needed) -- The SIA's proposal that RICO be amended to narrow its scope has merit, but we do not believe this is an issue on which it is appropriate for the Commission to take a position, since this agency does not administer RICO. There would be no objection to its consideration by the Bush Task Group, however.

(3) Dual Registration of Broker-dealers as Investment Advisers (Legislation needed to exempt broker-dealers, but not to integrate registration forms) -- The thrust of this proposal has merit but not the manner in which the SIA proposes that it be implemented. That is, we do not agree that broker-dealers should be exempted from registration under the Investment Advisers Act. But, paperwork burdens incident to dual registration could be elminated by combining the broker-dealer and investment adviser registration forms.

(4) Arbitration (legislation needed) -- We agree with the SIA that arbitration is preferable to litigation, although a recommendation that broker-dealers be permitted to obtain customer consent to compulsory arbitration would be controversial.

(5) 1934 Act Section 13(f) (legislation needed) -- We do not believe that the Bush Task Group should support repeal at this time of Section 13(f) which requires disclosure of securities holdings by institutional issuers.

(6) 1934 Act Section 16(a) (no legislation needed) -- We agree with the proposal that Section 16(a) of the Securities Exchange requiring disclosure of holdings in excess of 10% of an issuer's securities and to disgorgement of short-swing trading profits with respect to such securities should not apply to broker-dealers engaged in block trading and "bought deal" transactions.

(7) Security Investor Protection Act (legislation needed) -- The Task Group should review the proposal to afford SIPC trustees flexibility to continue to operate a broker-dealer during liquidation, but the proposal would be likely to be controversial because SIPC opposes it.

(8) Employment Retirement Income Security Act of 1974 (legislation needed) -- We believe it would be inappropriate for the Commission to make any type of recommendation concerning these matters to the Bush Task Group.

(9) Investment Company Act Section 12(d)(3) (legislation not needed) -- We agree with the proposal to permit investment companies to acquire shares of broker-dealers.

(10) Prospectus Delivery -- We agree with the SIA suggestion that broker-dealers be permitted to confirm sales of new issues by companies registered on Forms S-2 or S-3, and Form S-1 syndicate trades without simultaneously transmitting the prospectus, although it does not require legislation and seems rather trivial for Task Group consideration.

(11) Accelerated Offerings, Rule 415 and Underwriters' Liability -- We recommend against encouraging the Bush Task Group to involve itself with the issues of underwriters' liability under Section 11 of the Securities Act. These complicated proposals which would be highly controversial with the Commission and the Congress. They could be implemented through Commission rulemaking but because of the great sensitivity of these issues if the Commission determines to make recommendations in this area, legislation might be the wiser course.

B. Detailed Discussion

(1) Options Disclosure Document

The SIA recommends that a single disclosure document be allowed to be provided to options traders.

Advantages

-- Only a single document would be needed, and broker-dealers would not have to follow up and deliver additional documents when the customer becomes involved in trading more types of products.

Disadvantages

-- The customer would be encumbered with a bulky document that might be confusing since it would describe types of options that he is not trading.

-- The entire document would be required to be revised every time a new product is added.

At present, SIA members must provide to an options trader a booklet prepared by the Options Clearing Corporation (OCC) and the exchanges entitled "Understanding the Risks and Uses of Listed Options" and, if the trader is approved to trade debt options, stock index options, or foreign currency options, a separate booklet, likewise prepared by the OCC and the exchanges, on each of these options for which he is approved. But, contrary to the SIA's assertion, the SEC rules do not require multiple documents; they only permit them. The OCC and the options exchanges wanted the multiple document approach. The Commission went along with the OCC and the exchanges on this, structuring its rules to permit multiple documents. The exchanges and the OCC could get together tomorrow and adopt a single document approach. It does not appear that any legal problems would be raised by the filing of a single options disclosure document. But, we understand that it may be premature to change the system at this time, since it has been in place less than a year. If the exchanges and the OCC developed a single options disclosure document, they would have to file it with the Commission under 1934 Act Rule 9b-1 60 days before its use. There is no formal procedure for Commission or staff approval, but it is likely that the staff would review and comment on the filing.

The Commission could, of course, amend its rules to require a single document. But for the reasons set forth above, we recommend against it.

We recommend that the Chairman inform the Bush Task Group that it need not inject itself into this controversy. Perhaps the staff should make these views known to the SIA.

(2) Racketeer Influenced and Corrupt Organizations Act ("RICO")

The SIA suggests amendments to RICO which would, in its judgment, prevent "ordinary contract disputes between brokers and their customers" from being elevated by plaintiff customers to the level of fraud. The recommended changes would require legislation.

<u>Advantages</u>

-- Would prevent subjecting businessmen who are not racketeers to impairment of reputation from RICO charges.

-- Would prevent treble damages for misstatements in ordinary contract disputes.

<u>Disadvantages</u>

-- Justice Department would oppose Commission legislative entry into this area.

-- If not carefully drafted, could make things easier for real racketeers.

We are in sympathy with this idea. RICO was designed to provide rights of action and treble damages for persons defrauded by racketeers and other habitual law violators, but it was drafted over-broadly. We believe that RICO has been used in ways that were not foreseen by Congress. As you know, many legitimate businesses and businessmen have been subjected to publicity and lawsuits associating them with "racketeers" as a result of the statute.

The only drawback we see in the SIA's proposals, and in proposals of others along the same lines, is that limiting the breadth of the statute could make things easier for genuine racketeers. We believe, however, that this could be taken care of by careful drafting, although this would be difficult. Congress was attempting to create a type of offense essentially based on a person's status as a mobster, but was aware of constitutional problems in creating such an offense. In order to avoid such problems, it drafted the statute broadly in a way that has caused other problems.

Despite our sympathy with the SIA's concerns, we do not recommend that the Commission take the lead in supporting legislation to amend RICO. We suspect that the Bush Task Group will not get involved in this. It does not directly relate to removing overlaps and conflicts caused by the fragmented jurisdiction of regulatory agencies over functionally similar business activities. Therefore, it appears to be outside the boundaries of the Group's charter. Moreover, we suspect that the Justice Department will not want the Task Group recommending legislation in this area.

We recommend that the Commission support appropriate legislation in this area, but that the Commission not take the lead in recommending a bill. There are several reasons for this. First, RICO has no impact on the Commission. We have no institutional interest in such legislation and would appear to be taking a position only to benefit the industry we regulate.

Second, the Department of Justice has primary responsibility in this area. The Department is apparently concerned about amendments to RICO which could make it less effective as a weapon against organized crime.

Third, we recommend against taking any initiatives in this area at this time because the Commission and the staff have not had an opportunity to carefully assess RICO's impact on securities litigation. The staff are now preparing an advice memorandum to the Commission on RICO, which includes a study of RICO's impact on securities litigation. Once the assessment has been done, we expect to have more to offer, both to the Department of Justice and to Congress, in the way of justification for the Commission's involvement in this area.

(3) <u>Dual Registration of Broker-Dealers as Investment Advisers</u>

The SIA has recommended that the Investment Advisers Act be amended to eliminate the registration requirement under that Act for persons who also are registered as broker-dealers under the 1934 Act.

<u>Advantages</u>:

-- Remove a layer of regulation from broker-dealers who charge separately for investment advice.

-- Eliminate duplicative registration forms.

<u>Disadvantages</u>:

-- Place investment advisers who are not registered as broker-dealers at a competitive disadvantage.

-- Remove appropriate investor protections.

The SIA's suggestion is a bit fuzzy and not entirely logical. It is not clear whether the SIA wants to be taken out from the definition of investment adviser or simply to be relieved of the obligation to register under both the Advisers Act and the 1934 Act.

If the SIA wants an amendment to exempt registered broker-dealers from the definition of investment adviser, legislation would be required. Such legislation is likely to be controversial. It would mean that registered broker-dealers would be entirely exempt from all provisions of the Advisers Act, which provides important additional protections for clients of investment advisers who charge fees for their advisory services.

For instance, registered broker-dealers would be exempt from the antifraud provisions in Section 206 of the Act which, unlike Section 10(b) of the 1934 Act, does not require that a fraud be "in connection with the purchase or sale of a security." Thus, Section 206 covers fraud in the inducement of the advisory relationship and misrepresentations in connection with carrying out the adviser's obligations, such as accounting for the proceeds of securities transactions, which may not be covered under Section 10(b).

In addition, Section 206(3) requires investment advisers to obtain their clients' written consent to certain transactions involving the client in which the adviser is acting as principal or as broker for a person on the other side of the transaction. */

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*/ This section also specifies that, even if a broker-dealer is registered as an adviser, the prohibitions shall not apply to any transaction with a customer of a broker or dealer if it is not acting as an investment adviser in relation to the transaction.

Finally, the Advisers Act limits performance based fees. While this limitation has recently been criticized, the Commission has thus far proposed rules removing the limitation only for sophisticated investors with substantial sums to invest.

Thus we question the SIA's assertion to the effect that dual regulation under the 1934 Act and the Advisers Act makes little sense. The Advisers Act provides important additional protections, as discussed above. A staff examination of rules under the two Acts several years ago disclosed virtually no duplication of regulation. The Advisers Act rules are limited to special protections arising from carrying on an advisory business for a fee. The protections are justified because when an adviser charges additional fees for his services, he has a higher duty of care and ought to be subject to more rigorous fiduciary obligations. The customer who pays for the adviser's advice expects to, and should, get more than mere brokerage services accompanied by free advice. Moreover, if he pays for the advice, the customer is less likely to ignore it. Finally, exempting broker-dealers who charge separately for advice would place registered investment advisers that are not broker-dealers at a competitive disadvantage.

We also question the SIA's assertion to the effect that abolishing fixed commissions rendered obsolete the concept of "special compensation" and that the concept is difficult to define. The Commission in 1978 published two releases setting forth staff views on the meaning of the term "special compensation." The purpose of the releases was to assist broker-dealers in determining whether they would be subject to the Act if they charge certain types of compensation. If any ambiguities remain, they can be solved by rulemaking or further publication of staff views. */

It appears that the SIA's principal complaints involve duplicate paperwork requirements, and not the additional substantive protections of the Advisers Act. We take it, therefore, that the SIA is really interested in some kind of "integration" of the registration and reporting requirements of the 1934 Act and the Advisers Act. This could be accomplished by rulemaking.

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*/ There is a problem in that the releases are difficult to find. They were issued in conjunction with a temporary rule which has now expired and which is therefore not found in the *Code of Federal Regulations*. Moreover, they are not published in the current volumes of the *CCH Federal Securities Law Reporter*, where a good securities lawyer would look to find authoritative interpretations of the term "special compensation." We intend to remedy this situation by sending an amendment to the *Code of Federal Regulations* to list the releases as interpretative releases of the term "special compensation" and to suggest to CCH that it include the releases in its current volumes.

The SIA's complaints about duplicative registration and reporting requirements have some validity. The burdens of additional registration under the Advisers Act are not substantial. They involve only the completion of a relatively simple form describing the principals of the business, the kinds of advice it intends to provide, and its fee structure. Nonetheless, the Commission should look into the possibility of decreasing unnecessary burdens by integrating registration and reporting under the two Acts. This could be done by simply providing a single registration form for registration under the Acts.

(4) Arbitration

The SIA recommends that the federal arbitration laws be amended to require that federal courts enforce predispute clauses prescribing arbitration of federal securities law claims. This also could be accomplished by amendments to the federal securities laws, but the change would clearly require legislation. We are attaching a separate memorandum this issue.

(5) 1934 Act Section 13(f)

The SIA recommends repeal of Section 13(f) of the 1934 Act, which requires that institutional investment managers exercising investment discretion with respect to equity security accounts exceeding $100 million report their investment holdings quarterly. Since the reporting program implemented by the Commission pursuant to Section 13(f) calls for little more than the minimum disclosure required by the statute, any significant relief from burdens of Section 13(f) would require legislative action.

Advantages

-- Remove expense and other burdens of reporting.

Disadvantages

-- Decrease material information now available to investment community.

The SIA states that the Section 13(f) reporting requirement results in high costs and paperwork for managers "without any demonstrable public benefit." In addition, the SIA contends that reporting investment managers are disadvantaged by the possibility that their investment strategies will be exposed, and that this exposure is particularly damaging to risk arbitrageurs.

It appears that the primary benefits of repeal of Section 13(f) would be reduced reporting costs and decreased paperwork, and that the SIA's claims of competitive harm are largely overstated. In 1980, after extensive consideration, the Commission concluded that the confidential treatment provisions of the 1934 Act are sufficient to protect competitive information required to be filed pursuant to Section 13(f). This conclusion resulted from consultations among the Division of Investment

Management, risk arbitrageurs, and block positioners to evaluate the possible competitive harm from release of such information. After this conclusion, the Commission denied a number of requests for confidential treatment, including some from risk arbitrageurs. */

Reduced disclosure would be the primary result if the SIA's recommendation were adopted. The legislative history of Section 13(f) indicates that Congress believed that information about large holdings of securities was important to investors and that such information was not available on an equal basis to the investment community. Accordingly, the purpose of the section was to require public disclosure of data on institutional holdings so that all investors -- institutional and individual -- would have access to the information. **/ Whether the benefits of Section 13(f)

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*/ Subsequently, a group of reporting managers submitted a request that the Commission reconsider its position on confidential treatment. Release of certain information has been withheld pending further Commission consideration of this request. This is what the SIA is referring to when it claims that disclosure of investment strategies would effectively hinder risk arbitrageurs "[i]f the SEC decides to revoke the confidential treatment of risk arbitrage positions that it has granted pending final determination."

**/ Indeed Section 13(f) gives the Commission authority to require not only reports on holdings, but also quarterly reports of transactions or series of transactions having a market value of $500,000 or more. The Commission has not exercised this authority.

disclosure outweigh the costs to managers is a matter that has not been evaluated. As an alternative, or prelude, to endorsing the SIA proposal, the Commission should ask the staff to do an analysis of the Section 13(f) program to determine whether its costs justify its benefits. Section 13(f) reports now have been required for almost five years. Sufficient data may exist to perform an adequate analysis.

It may not be possible conclusively to refute the SIA's claim that there is no "demonstrable public benefit" to the Section 13(f) reports. There is, however, a demonstrable public demand for them. Several vendors sell Section 13(f) information to the public. These vendors have expressed strong interest in collecting the information, and have, from time to time, expressed concerns about the possibility of incomplete or inaccurate reporting. In addition, there are approximately 60 public inquiries per week for Section 13(f) information in our public reference room. The Section 13(f) reports may be the only source for a large part of the data they contain.

Without further evaluation of the public benefits of Section 13(f), we are unable to make a recommendation with respect to this proposal of the SIA. We suspect that an endorsement would elicit substantial controversy. Our sense is that Congress wants more, not less, disclosure of the activities and holdings of institutional investment managers.

We suggest, therefore, that the staff examine the feasibility of doing the cost/benefit analysis discussed above. An alternative, which would not go as far as endorsing the SIA recommendation, would be to call for Congressional review of Section 13(f). We do not recommend this alternative, however. It could be misinterpreted as support for the SIA proposal and elicit the same kind of controversy as outright support.

(6) <u>1934 Act Section 16</u>

The SIA recommends thaat Section 16 of the 1934 Act be amended to exclude block-trading and bought deals from certain provisions of the Section. It appears that the SIA is most interested in an exclusion from the short-swing profit provisions of Section 16(b), but they may also be interested in an exemption from the beneficial ownership reporting provisions of Section 16(c).

<u>Advantages</u>

-- Remove burdens of reporting and disgorgement of short-swing profits from situations that Section 16(b) was not intended to cover.

-- Provide greater liquidity and depth to markets.

<u>Disadvantages</u>

-- Removing reporting requirements would lessen material information available to investors.

The SIA seems to feel this would require legislation. We believe, however, that at least the short-swing profit exclusion could be achieved in a rulemaking proceeding, and that the SIA would be satisfied with this.

This basic idea has been suggested before. It apparently originated with Saul Cohen, General Counsel of Lehman Brothers. The current rule may operate in a way that precludes a firm from handling a bought deal alone if it has a director on the board of the issuer. Another condition is that any person subject to Section 16 can participate in a distribution of a block only to the extent of the aggregate participation of firms not subject to Section 16.

The position of the SIA appears to have considerable merit. Block trading and bought deals contribute to the efficiency of the markets and do not appear to be comprehended within the purposes of Section 16. The market has changed considerably since the rules regulating these activities were adopted. Changes may be required to reflect current market conditions. We recommend that the Chairman ask the Divisions promptly to consider this matter.

This proposal could be controversial. Some might prefer that the Commission seek legislation to implement it. This is not the kind of proposal, however, that Congress is likely to enact quickly. We are doubtful that it would be worth the trouble if we decided to go the legislative route.

(7) Securities Investor Protection Act

The SIA recommends that the Securities Investor Protection Act (SIPA) be amended to enable the trustee for a broker-dealer liquidation to operate the business during the liquidation. This concept was first proposed two years ago by a Special Task Force established by former SIPC Chairman Hugh F. Owens. Its implementation would require legislation.

Advantages

-- Would unfreeze security positions of customers of insolvent broker-dealers.

-- Would engender more confidence in securities industry and thus could indirectly aid capital formation.

Disadvantages

-- SIPC would need to expand its staff and activities.

-- Although SIPC is supposedly a private corporation, because of SEC oversight, would involve government more directly in running private businesses.

As presented by the SIA, the primary benefit of this proposal would be to unfreeze the security positions of customers of an insolvent broker-dealer.

We believe this idea merits further inquiry. We do not recommend, however, that the Commission endorse it immediately. SIPC itself may not want this authority. Also, we are concerned that SIPC's staff and other resources could not deal with the increased workload.

We recommend that the Commission wait until the staff completes a study that it is now conducting of the Special

Task Force's proposal. Although many people considered the proposal a good concept when it was first offered, several persons familiar with broker-dealer liquidations have raised questions about practical difficulties in implementing the proposal.

These difficulties include: (1) the tendency of registered representatives to leave a firm when a SIPC trustee is appointed, so that there may not be sufficient qualified personnel to accept customer orders or otherwise run the business; (2) the need to identify which customer records are reliable and, thus, which customers might be permitted to trade in their accounts; (3) if the determination in (2) above is made immediately and incorrectly, the need then to determine who is liable for the mistake; (4) the likely need to indemnify the trustee against personal liability as a result of operation of the business; and (5) the loss of clearing corporation membership pursuant to rules that require suspension of a member firm upon its insolvency. These questions may affect the determinations of whether an amendment of SIPA is feasible, and if it is, the details of such an amendment. Because the staff's study includes consideration of these difficulties, we believe it is premature to address the merits of the SIA's recommendation before the staff completes its study.

(8) Employee Retirement Income Security Act of 1974

The SIA has made seven recommendations connected with the efficiency of the administration of ERISA and the possible avoidance of unnecessary duplication of regulation by the Commission and the agencies that administer ERISA -- the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation. The recommendations also raise issues of unnecessary regulatory burdens imposed on SIA members. Our view is that virtually all the SIA recommendations would require legislation, while certain others could be implemented by the ERISA agencies, primarily the Labor Department.

Advantages

-- Remove unnecessary and duplicative regulation of broker-dealers.

-- Lessen expenses of pension management, to benefit of employees.

Disadvantages

-- Recommendation not in areas subject to Commission jurisdiction, although our experience with similar restrictions under 1934 Act relevant.

-- Commission could be critized for injecting itself in an area in which it has tried and failed before.

The Commission has very little experience with ERISA and no statutory authority for its administration. The Commission's authority to protect the interests of pension plan participants was sharply limited by the Supreme Court's decision in International Brotherhood of Teamsters v. Daniel, 439 U.S. 551 (1979), in which the Court held that involuntary, noncontributory fixed benefit plans are not securities, and thus are not subject to the antifraud provisions of the federal securities laws.

The Daniel case did not involve interests in voluntary, contributory plans, i.e., plans in which employees have a choice as to whether to make out-of-pocket investments in the pool of securities used to fund the plan. The Commission has continued to take the position that such interests are securities, subject to the antifraud provisions of the federal securities laws, but generally exempt from registration. There are, however, some court decisions to the contrary. */

The recommendations of the SIA go to the administration of ERISA and not explicitly to the lingering antifraud issues left open by the Daniel case. For example, the SIA suggests revising the current class exemption, apparently under Section 408(a) of ERISA, to conform to Commission Rule 11a2-2 under the Securities Exchange Act. The proposal appears to be a matter for legislation or for DOL regulatory action.

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*/ At the time of the Daniel case, the Commission was severely critized for attempting to inject itself into an area in which Congress had erected a comprehensive regulatory scheme related to labor and tax law and providing comprehensive protections in some respects more restrictive than the securities laws. Those critics included Senator Williams, a primary author of ERISA, and also Chairman of the Senate Securities Subcommittee.

In noting restrictions on dealer transactions, the SIA is apparently referring to the provisions of Section 406(a) and 2003 of ERISA, which greatly restrict the activities of a broker-dealer serving as the manager or trustee of a pension plan, despite provisions in Section 408(a) that permit the Secretaries of Labor and the Treasury to grant variances to persons providing brokerage or other services.

We believe that any modification of this legal arrangement is a matter for Congressional or ERISA agency action. But the Commission's experience in giving relief from similar restrictions in Section 11(a) of the Securities Exchange Act is relevant and could be used as a basis for our urging similar relief under ERISA. This approach also applies, obviously, to the suggestion that fiduciary definitions determined pursuant to DOL regulations be revised.

Similarly, changes in bonding requirements, as suggested by the SIA, would require changes in the basic statute and in DOL regulations. The same requirements would apply to the SIA proposal for plan asset redefinition. Again, DOL and the IRS jointly issued the exemptive regulation governing credit extension. The regulation in question refers to some provisions of law in the Commission's jurisdiction, however, and this fact could obviously present a ground for discussion with the IRS and DOL on this matter. */ Finally, the suggestion for a revision in the stock loan class exemption, if referring to exemption from regulation under Section 408(b) of ERISA is a matter for legislation or ERISA agency action.

The above analysis of the SIA's recommendations concerning ERISA is only a brief summary and does not do justice to the complexity and nuances of ERISA -- a statute as complex as the 1933 and 1934 Acts. We are preparing a more extensive analysis of ERISA problems related to securities regulation. Until more work is done in this area, we are not prepared to comment definitively on the SIA's ERISA recommendations.

What we do know is that ERISA, and its subsequent amendments, involved the creation of a delicate political balance which is continuing to evolve and to stabilize. The three government agencies with responsibility for administration of ERISA have had coordination problems. Recently, however, there have been indications that the three agencies are effecting a *modus vivendi* for more efficient administration. This development includes some consolidation of reporting and disclosure requirements, and new indications of an enhanced enforcement program.

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*/ Any other matter that touches on law or regulations in the Commission's jurisdiction could, of course, provide a similar basis of discussion, especially where Section 11(a) of the Securities Exchange Act is concerned.

(9) Investment Company Act Section 12(d)(3)

The SIA recommends that mutual funds be allowed to purchase shares of broker-dealers that sell mutual funds or act as adviser to mutual funds.

Advantages

- -- Would provide additional source of capital for broker-dealers.
- -- In order to prevent conflict of interest, restrictions would be needed on relationships of broker-dealer with fund, such as on sale of fund shares. This could shut off outlets for fund share sales.

We believe the Commission could do this in a rulemaking proceeding. Presumably, the SIA only supports a modification that would permit mutual funds to purchase shares of broker-dealers that do not distribute their shares and are not otherwise affiliated with the fund.

We agree with the SIA that the prohibition at issue is outdated. It originated at a time when most broker-dealers were privately owned. In today's market, it may tend to penalize mutual funds, which cannot invest in well-performing broker-dealer stocks. We suggest the Chairman ask the staff to explore the possibility of a rulemaking in this area.

(10) Prospectus Delivery

The SIA suggests that underwriters be permitted to send prospectuses for certain offerings after they have mailed out confirmations. */ We are in sympathy with this idea, and believe the Commission may be able to implement it by regulation.

Advantages

-- Decrease compliance costs for broker-dealers.

Disadvantages

-- Lessen actual information promptly supplied to investors.

The Commission would not want to abolish completely the prospectus delivery requirement. The SIA does not appear to envision this. What the Commission could possibly do is promulgate a rule providing for incorporation by reference of the full prospectus in the confirmation for offerings meeting the requirements for use of Forms S-2 and S-3. Another plausible idea is to define a confirmation as a prospectus complying with Section 10 of the 1933 Act if it contains appropriate information and a legend notifying the purchaser that a prospectus will follow under separate cover. The availability of such a rule would be conditioned on the actual subsequent delivery of the prospectus.

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*/ The SIA proposes that trades in new issues of companies registered on Forms S-2 and S-3 be confirmed in the regular way (logally) automatically, with a prospectus mailed from the home office as soon as it is available. Syndicate trades in S-1 issues would be confirmed in the usual way if a red herring had already been delivered to the customer, with the final prospectus mailed from the home office as soon as it is available.

(11) Accelerated Offerings, Shelf Registration, and Underwriters' Liability

The SIA recommends that the Commission promulgate a rule that would reduce the exposure of underwriters to 1933 Act Section 11 liability in accelerated offerings.

Advantages

-- Reduce compliance expenses for underwritters and issuers and thus for investors and remove burden on capital formation.

Disadvantages

-- Lessen investor protection and possibly impair compliance in securities markets.

As you know, the shelf registration rule has facilitated accelerated offerings. But, we strongly recommend against encouraging the Bush Task Group to involve itself in this complicated and much-discussed issue. The SIA recommendations to reduce underwriter exposure by eliminating due diligence responsibility for incorporated documents or by adopting a "safe harbor" rule deserve study. We believe, however, that this matter should be resolved as part of the Commission's consideration of the shelf rule and Rule 177.

AR/81/ab