M E M O R A N D U M

TO: John Huber, Director
Division of Corporation Finance

FROM: Doug Scarff, Director
Division of Market Regulation

SUBJECT: Regulation A and D Disqualifications in the Context of Broker-Dealer Administrative Settlements Involving Censures and so Ordered Undertakings

DATE: April 13, 1984

As you are aware, the issue of the effect of an administrative sanction consisting of a censure and so ordered undertakings under the disqualification provisions of Regulations A and D was raised last fall in connection with the A.G. Becker matter out of the Chicago Regional Office. Corporation Finance took the position that a disqualification would arise and remain in effect for the life of so ordered undertakings. In addition, you took the position that relief could only be obtained through offering by offering application to Corporation Finance pursuant to Rule 252 after entry of the order giving rise to the disqualification. In the A.G. Becker matter discussions between your staff and counsel did result in an agreement that your Division would look favorably upon a blanket application for relief, and the settlement went forward.

Upon further reflection, I am increasingly concerned about the effects of the positions taken last fall. Specifically, I am concerned that by taking the position that so ordered undertakings constitute a disqualification, and further, that relief can be considered only on an offering by offering basis and only after entry of the order, the effectiveness of the Commission's regulatory and enforcement programs with respect to large broker-dealers will be severly undermined. As I am sure you are aware, the Commission has historically found it approprite to settle a wide range of cases against major firms through sanctions consisting of censures and so ordered undertakings. Indeed, many of the major firms including Bache, Hutton and Merrill Lynch are currently subject to such orders. Research by your staff during the pendancy of the Becker matter revealed that these firms have continued to participate in Reg D's, apparently unaware of your position that they are disqualified.

I fear that once the collateral consequences of so ordered undertakings are known to the industry, firms will be unwilling to settle cases on this basis unless they can resolve the issue of the disqualification before entry of the Commission order. It strikes me that the easiest and most efficient means of preserving our ability to deal effectively with large firms is to have the Commission consider and decide the issue of the disqualification, with the full participation of Corporation Finance, at the time the Commission considers the offer of settlement. The question of the mechanics (whether the disqualification is addressed in the settlement papers and the Commission order imposing sanctions or in separate simultaneous documents pursuant to Rule 252) is not important.

I would appreciate the opportunity of discussing these issues with you.

cc: John M. Fedders
Bill Goldsberry
Gary Lynch
Phil Parker