

October 28, 1974

William W. Golub, Esq.
Rosenman Colin Kaye Petschek
Freund & Emil
575 Madison Avenue
New York, New York 10022

Re: ABA Subcommittee on Broker-Dealer
Matters--SIPC Task Force Report

Dear Bill:

Enclosed are my comments on the Task Force Report. Please feel free to revise either my language or conclusions if you disagree with me. I have not sent these comments to any other subcommittee members since I thought you might wish to incorporate all of our comments into a single letter.

I have some fairly strong views on the jurisdictional inadequacies in the 1970 Act which are scheduled for publication in the Brooklyn Law Review early next month. I will be happy to forward my article to you as soon as a copy is available.

In addition, I believe that major policy recommendation II(G) that the Bankruptcy Act not continue to be incorporated by reference into the 1970 Act in the manner in which it is presently incorporated should be endorsed. However, if specific sections of the Bankruptcy Act will instead be incorporated, the 1970 Act amendments should be very clear as to whether subsequent Bankruptcy Act amendments are also incorporated by reference.

There probably would be a more desirable result if separate but similar provisions for SIPC liquidation proceedings were drafted and no reference was even made to the Bankruptcy Act. At the same time, to the extent that the rights of creditors are changed, it probably is constitutionally necessary for Congress to invoke its powers to pass bankruptcy laws. For example, on page 21 of the Task Force Report it is proposed that all claimants, other than customers, become general creditors. As mentioned in my comments, this would be contrary to normal bankruptcy priorities and the United States as a tax claimant, and wage earners would be adversely affected. If this is the intent of Congress, such intent must be made very clear.

If I can be of any further assistance to you on this project, please call upon me.

Sincerely,

Roberta S. Karmel

Enc.

RSK:ERD