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October 27, 1976

Honorable Roderick M. Hills
Chairman
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Chairman:

We are writing because we have heard that the Commission is planning a reorganization which would abolish the Office of Opinions and Review and transfer its functions to the Office of General Counsel. All of those signing this letter are members of the Executive Council of the Securities Law Committee of the Federal Bar Association. Time has not permitted the circulation of this letter to the full membership of the Council although on the basis of a limited discussion at a recent meeting of the Council, we believe that the conclusions we express are generally shared by the members. Present SEC personnel who are members of the Council did not participate in the discussion nor did they otherwise express any views on this matter.

Although we do not know the details of the planned reorganization, we believe that any shift of the functions of the Office of Opinion Writing and Review to any other Office or Division of the Commission which has other responsibilities would tend to detract from the degree of procedural due process presently afforded respondents in contested administrative proceedings.

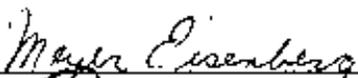
Under procedures currently in effect, the Office of Opinions and Review is responsible (except where there has been a waiver of separation of functions) for assisting members of the Commission in the preparation of the opinions of the Commission. With the exception of responsibility for the preparation of the Commission's Annual Report to the Congress, all of the other duties of the Office are confined to adjudicatory responsibilities. Staff members in the Office of Opinion Writing and Review are thereby insulated from involvement in regulatory or enforcement

issues being considered elsewhere in the Commission. Therefore, personnel of the Office do not share responsibilities or work on a daily basis with the staff of other offices and Divisions of the Commission who have such responsibilities. Moreover, the Director of the Office reports directly to the Commission and he has no other responsibilities beyond the functions of his own office. Thus, the charter of the present Office of Opinions and Review tends to assure that the advice rendered to the Commission in the discharge of its quasi-judicial functions is isolated from considerations other than the merits of the particular case and, as a practical matter, to separate the personnel of the Office from daily business contact with other Commission employees engaged in the prosecution of enforcement matters in administrative proceedings. The transfer of the functions of the Office to the Office of General Counsel would destroy this healthy insulation. It is on this basis that we conclude that the proposed transfer would tend to degrade the standards of procedural due process which currently exists in SEC administrative proceedings.

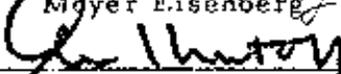
We are also of the view that the unique nature of this reorganization raises a number of questions which interested persons should have an opportunity to comment upon. Therefore, we strongly recommend that the Commission give full consideration to announcing this proposal in a public release with a sufficient comment period provided for.

We wish to emphasize that we do not regard it as sufficient that it may be argued that the proposed transfer would be lawful. As to this legal point, we express no view at this time. We would wish to observe, however, that a diminution of procedural due process is not rendered desirable because it might be held to be lawful. Although we have the greatest respect for the judgment of the Commission, we believe that in this instance other considerations may have been permitted to outweigh the more fundamental values of fairness and total objectivity which must obtain in the discharge of quasi-judicial responsibilities.

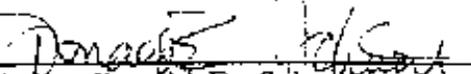
Very truly yours,



Myer Eisenberg



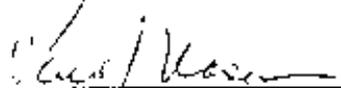
Allan S. Mostoff



Donald E. Schwartz



David Silver



Paul J. Mason, Chairman
Executive Council
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cc: Commissioner Philip A. Loomis, Jr., Commissioner John R. Evans,
Commissioner Irving M. Pollack
Harvey L. Pitt, General Counsel