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COMMITTEE ON SECURITIES REGULATION

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February 23, 1976

The Honorable Harrison A. Williams, Jr.,
Chairman, Subcommittee on Securities,
Banking, Housing and Urban Affairs,
United States Senate,
Washington, D.C.

The Honorable Lionel Van Deerlin,
Chairman, Subcommittee on Consumer
Protection and Finance,
House of Representatives,
Washington, D.C.

Re: S. 1231 and H. R. 8064: Securities
Investor Protection Act Amendments
of 1975

Dear Sirs:

Referring to our letter of December 31, 1975, relating to the above bills, the Committee on Securities Regulation of the Association of the Bar of the City of New York has the following additional comments for your consideration.

Section 3(b)(4) of the Securities Investor Protection Act of 1970 (the "1970 Act"), as proposed to be amended, would give SIPC rule making powers. Since SIPC is not a governmental agency (Section 3(a)(1) of the 1970 Act), and therefore not subject to the Administrative Procedure Act, the Freedom

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of Information Act and the like, we believe that SIPC's rule making authority should be more narrowly circumscribed than is contemplated by the proposed amendments.

Specifically, under these circumstances, we think the SEC oversight arrangements relating to SIPC rule making might more appropriately be those established for self-regulatory organizations by Section 19 of the Securities Exchange Act, rather than those contemplated by proposed Section 3(e)(3) of the 1970 Act.

Further, we believe that that portion of proposed Section 3(b)(4)(A) which would permit SIPC to define terms at variance with the Securities Exchange Act or rules thereunder should be eliminated. We also suggest that it should be made clear that SIPC would not have power to change the priorities of creditors in SIPC liquidations from those established by the legislation.

Finally, that part of proposed Section 4(e)(3) of the 1970 Act which would permit SIPC to impose penalty charges (in addition to interest) in respect of underpayments of SIPC assessments should be eliminated. First, we believe that the provisions for interest on unpaid sums should be an adequate incentive to prompt payment, and that penalty charges are not

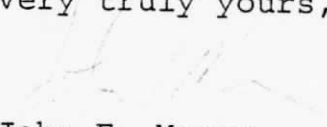
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needed. Second, we do not think it appropriate for SIPC, as a non-governmental agency not subject to the Administrative Procedure Act, to have the power to make the adjudicative decisions involved in applying penalties.

While we urge that the proposed legislation be revised or discussed above and in our letter of December 31, 1975, our Committee continues to believe that the amendment program is desirable and should be enacted.

Very truly yours,


John E. Merow,
Chairman

Copy to,
Hugh F. Owens,
Chairman
Securities Investor Protection Corporation