



**SECURITIES INVESTOR PROTECTION CORPORATION
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OFFICE OF THE GENERAL COUNSEL

February 4, 1988

HAND DELIVERED

Honorable Judge Frank Q. Nebeker
Director
Office of Government Ethics
Suite 400
1625 K Street, N.W.
Washington, D.C. 20006

Dear Judge Nebeker:

Pursuant to 5 C.F.R. §734.604(c)(2)(iii), this letter is written with respect to the nomination of Frank G. Zarb as a Director of the Securities Investor Protection Corporation ("SIPC"), established pursuant to the provisions of the Securities Investor Protection Act of 1970 ("SIPA"). 15 U.S.C. §78aaa et seq.

With respect to this opinion, certain provisions of SIPA should be kept in mind. Section 78ccc(c)(2) of SIPA provides in considerable detail the composition and qualifications of persons serving as Directors of SIPC. Five Directors are to be appointed by the President of the United States with the advice and consent of the Senate. Of these five, three are to be selected from among persons who are associated with or representative of the securities industry, and two are to be persons who are not associated with any broker-dealer or securities industry group. In addition to these five Directors, two Directors are Government officials — one of whom is appointed by the Secretary of the Treasury and one of whom is appointed by the Federal Reserve Board from their respective officers and employees. Of the seven Directors, only the Chairman serves in a salaried capacity.

Mr. Zarb is a Senior Partner of Lazard Freres and Co. ("Lazard"), which is a broker-dealer registered with the United States Securities and Exchange Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934. As such, Mr. Zarb is, of course, associated with and representative of the securities industry.

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In my opinion, Mr. Zarb's association with Lazard creates in itself no conflict of interest with respect to service on SIPC's Board of Directors, since such association is not only contemplated but required by Section 78ccc(c)(2)(C)(i) of SIPA. A conflict of interest could arise, however, either if Lazard or an affiliated company, were to become a subject of any action by SIPC or if Lazard or an affiliated company, had a claim against any securities firm which was placed in liquidation pursuant to the provisions of SIPA and the SIPC Board of Directors was called upon to consider that claim. Mr. Zarb has advised me that, should any of the above situations arise, he would disqualify himself from participation in the matter.

Mr. Zarb holds investments in entities other than Lazard. None of these corporations or entities, however, is a broker-dealer. Accordingly, I see no conflict of interest with respect to these investments, since SIPC has no power or authority with respect to or jurisdiction over companies which are not broker-dealers.

In conclusion, I do not believe that Mr. Zarb has any conflict of interest under applicable laws and regulations except for the potential conflict which might be regarded as existing by reasons of compliance with the requirements of SIPA that three Directors be associated with and representative of the securities industry. In view of the understanding expressed by Mr. Zarb as set forth above, I think no problem in this regard presently exists or is likely to arise. I see no reason why Mr. Zarb would be unable to perform his duties as a member of the Board of Directors of SIPC in accordance with all of the responsibilities placed upon him by SIPA.

Very truly yours,



Theodore H. Focht
General Counsel

THF:leg

cc: Mr. Frank G. Zarb
Senior Partner
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