PRESS RELEASE

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U.S. Securities and Exchange Commission
Office of Public Affairs

Briefing Paper: The Proposed Federal Securities Code

This summary of recommendations which are being made by the staff of the Commission has been prepared in order to assist persons attending an open meeting scheduled for September 18, 1980 in following the discussion at the Commission table. It is neither exhaustive nor definitive, and users should be aware that changes in the proposals under consideration may be made in response to comments by Members of the Commission.

The American Law Institute's proposed Federal Securities Code seeks to draw together the six separate federal securities statutes enacted since 1933 into a single, comprehensive law — updated to address the many new issues and problems that have arisen over the past fifty years. In this sense, it is not just a codification; it would work many major substantive changes in the operation of the federal securities laws.

The Code is divided into twenty parts. Part I states the Code's purposes. Part II contains definitions that apply Code-wide, and Part III deals with exemptions. Parts IV-VI deal with issuer registration and disclosure, along with post-registration obligations. Here, the Code would place primary emphasis on continuous disclosure by registrants, deemphasizing the "one-shot" disclosure attendant to public distributions of securities today. Parts VII-XII contain market regulation and securities professional provisions. Parts XIII-XV deal, respectively, with trust indentures, investment companies and utility holding companies. Part XVI is concerned with fraud, misrepresentation and manipulation, with new standards governing the duty to update, insider trading, false publicity and other forms of unlawful conduct. Part XVII establishes

an entirely new statutory foundation for private rights of action, both express and implied. Part XVIII covers administration and enforcement. Part XIX describes the scope of the Code, and Part XX is a general, residual section.

Detailed comments explaining the operation of the section and its relation to prior law (both statutory and case law) are provided, and it is intended by the drafters that these comments would in some form become part of the official legislative history. This underscores the fact that the Code is really not meant to be a departure from, but rather a step in the evolution of, the current body of federal securities law.

The Code's drafters — Professor Louis Loss of the Harvard Law School and his advisers — have spent over ten years in the drafting process, attempting to style each proposed revision in the interests of clarity, consistency and sound public policy. Given this effort, the Commission has felt a responsibility to respond in like manner, by providing a detailed review of the Code, and giving the drafters the benefit of its own day-to-day experience and expertise derived from administering the securities laws in today's complex business environment.

Thus, in the two years since the project's approval by the Institute and its endorsement by the American Bar Association, the Commission and its staff have spent literally thousands of hours reviewing the proposal, and considering its potential impact on the carrying out of our statutory objectives. The staff has held a long series of meetings with Professor Loss and a group of his advisers to raise concerns and make suggestions for changes to particular provisions of the Code. The recommendations growing

out of these meetings were then discussed in four public sessions in September and October 1979, at which the Code's drafters appeared before the full Commission. With the benefit of these discussions, and the subsequent responses from the Code's drafters, the Commission will today consider a recommendation from the staff that it support enactment of the Code, as revised to incorporate certain changes which reflect agreements reached with the Reporter and his advisers.