#### IX

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Pursuant to separate agreements reached by SMC and Caxton with the SEC and the Department, the defendant entities will pay \$35 million into a fund to be available for damages claims from private parties that have been injured by their conduct, including damages incurred as a consequence of violations of the antitrust laws.9 Entry of the proposed Final Judgment itself will neither impair not assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no prima facie effect in any subsequent lawsuits that may be brought against SMC or Caxton in this matter.

### 17

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John F. Greaney, Chief, Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 9901, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification interpretation or enforcement of the Final Judgment.

#### VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment provides all the relief that the United States sought in its complaint. The Department believes that litigation on the allegations in the compliant would involve substantial cost to the United States and is not warranted given the relief to be obtained in the proposed Final Judgment. In specifying the relief set forth in the proposed Final Judgment, the Department consulted with and considered the views of experts in the Treasury securities field, including the United States Department of the Treasury and the SEC. The specific injunctive provisions are tailored to ensure that the defendant entities will not engage in the same illegal conduct, and in the event of violations, are enforceable through civil and criminal contempt. Further, the payment by defendant entities under Section 6 represents the second-largest forfeiture or other penalty ever paid to the government by defendants in a single antitrust case, and will provide a substantial deterrent to future anticompetitive conduct in the Treasury securities markets.

Another alternative to the proposed Final Judgment would be to prosecute this conspiracy as a criminal violation of Section 1 of the Sherman Act, 15 U.S.C. 1, rather than through a civil complaint. The Department carefully considered this alternative. The Department determined, in the exercise of its prosecutorial discretion, that charging this matter as a civil violation was most appropriate. The releases from criminal prosecution set forth in the Settlement Agreements attached hereto merely confirm the Department's decision that the case is more appropriately brought as a civil matter.

## VII

Determinative Materials and Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Dated: December 16, 1994. Anne K. Bingaman,

Assistant Attorney General, Antitrust Division.

Respectfully submitted, Hays Gorey, Jr., HG1946,

Kenneth W. Gaul, KG2858

Attorneys, U.S. Department of Justice, Antitrust Division, Room 8104, 555 4th Street, NW., Washington, DC 20001, (202) 514–9602.

# Certificate of Service

I, Kenneth W. Gaul, an attorney in the Department of Justice, Antitrust Division, certify that on this date I have caused to be served by hand the attached COMPETITIVE IMPACT STATEMENT upon the following counsel for defendant entities in the matter of *United States* v. *Steinhardt Management Company, Inc. and Caxton Corporation, et al.* (94 Civ. \_\_\_\_\_). Frederick P. Schaffer,

Shulte, Roth & Zabel, 900 Third Avenue, New York, NY 10022 (Counsel for Steinhardt Management Company, Inc.)

Richard J. Wiener,

Caldwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038 (Counsel for Caxton Corporation).

Kenneth W. Gaul.

December 16, 1994.

United States District Court, Southern District of New York, United States of America, Plaintiff, v. Steinhardt Management Company, Inc.; and Caxton Corporation, Defendants, and \$12,500,000 That is the Property of Steinhardt Management Company, Inc.; Steinhardt Management Company, Inc., Real Party in Interest and \$12,500,000 That is the Property of Caxton Corporation, Caxton Corporation, Real Party in Interest. 94 Civ. 9044.

## Settlement Agreement

This Settlement Agreement ("Agreement") is made between the United States of America ("Plaintiff") and Steinhardt Management Company, Inc., ("SMC").

1. This Agreement is made to resolve and forever to settle SMC's liability under the antitrust laws for certain conduct to be alleged in a Complaint to be filed by the United States pursuant to this Agreement. Upon the fulfillment of the conditions set forth in this Agreement, the releases described herein shall be effective.

2. On the date of execution of this

(a) Plaintiff shall file a civil Complaint alleging a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, by SMC and others in connection with the acquisition and trading of certain United States Treasury notes;

(b) Plaintiff shall file a Final Judgment in the form attached as Exhibit A, that, if entered by the Court, would resolve

<sup>&</sup>lt;sup>9</sup>The specific permitted grounds for successful claims against the disgorgement fund and the mechanics of fund operation under the auspices of the SEC are set forth in the *Final Judgment of Permanent Injunction and Other Relief* as to each defendant entity, filed contemporaneously with the SEC's complaint against SMC and Caxton.