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February 19, 1971

Honorable Emanuel Celler
Chairman
House Antitrust and Monopoly Subcommittee
Committee on the Judiciary
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

The purpose of this letter is to register with you the complaint of M. A. Schapiro & Co., Inc. concerning the exclusion by the National Association of Securities Dealers (NASD) of securities listed on national securities exchanges from its System of Automated Quotations (NASDAQ). There is attached to this letter a copy of the February 1971 issue of the Bank Stock Quarterly which explains the background and effect of this boycotting action.

We have been advised by our counsel that the exclusion of listed securities by the NASD from the NASDAQ System constitutes a violation of the Federal antitrust laws.

In 1968 the members of the NASD voted overwhelmingly to include listed securities on NASDAQ. On October 20, 1970, however, the Board of Governors of the NASD, 16 out of 23 of whom are representatives of New York Stock Exchange member firms, arbitrarily overruled the membership by boycotting trading through NASDAQ in listed securities.

As indicated in the Bank Stock Quarterly, the then Chairman of the Securities and Exchange Commission (SEC), Hamer H. Budge, advised the NASD "the Commission will have no objections if the Association does not include in the NASDAQ system at start-up securities which are listed on national securities exchanges." Chairman Budge's letter dated October 30, 1970 was in response to a letter dated October 22, 1970 from Gordon S. Macklin, President of the NASD. Minutes of a meeting of the Securities and Exchange Commission which have been made available to us indicate that the Commission's action was taken at 9:35 a.m. on the morning of October 22, 1970. Thus, on the assumption that Mr. Macklin's letter was prepared and transmitted to the Commission prior to 9:35 a.m., the time sequence suggests that no

deliberation was engaged in by the SEC and clearly no members of the securities industry or the public were given any notice or opportunity to be heard.

If the N.Y.S.E. wants a "black-out" on prices of competing markets applied to NASDAQ equipment in use at the premises of its member firms, it would be consistent with its boycott Rule 394 and 394 (b). We understand this is mechanically feasible.

The full effect, however, of the action by the NASD's Board of Governors of excluding listed securities from the System completely is to prevent even non-members of national securities exchanges from communicating among themselves concerning prices of securities listed on any of the exchanges. This has come about clearly as a result of the New York Stock Exchange dominance of the National Association of Securities Dealers.

The action taken has consequences comparable to the New York Stock Exchange inducing the Telephone Company to prevent non-members of the Exchange from calling each other on the telephone to communicate among themselves concerning prices of listed securities. Fortunately the N.Y.S.E. does not control the Telephone Company. It does control the NASD despite the fact that only 1,366 of the present 4,348 members of the NASD are also members of the N.Y.S.E.

The result is an exercise of monopoly power by the New York Stock Exchange over the NASD.

We request that the Antitrust and Monopoly Subcommittee take prompt action to put an end to this abuse of economic power wielded by the New York Stock Exchange. The Governors of the NASD will meet on March 13, 1971 to reconsider their action of October 20, 1970 by voting on whether they should reverse their arbitrary and exclusionary action.

A statement by you as Chairman of the Antitrust and Monopoly Subcommittee of the House of Representatives would move the New York Stock Exchange and its representatives on the Board of Governors of the NASD to allow the System to be operated in the interest of the general membership of the NASD and the investing public rather than in the private interest of the N.Y.S.E.

Sincerely,

Morris A. Schapiro
President

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