

The Fund America Companies
San Francisco, California

February 29, 1968

Mr. Orval L. DuBois, Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: Securities Exchange Act of 1934 Release No. 8239 - Submission of
Comments

Gentlemen :

The following comments are submitted on behalf of The Fund American Companies, a holding company directing through its subsidiaries investments of property and casualty insurance companies, life insurance companies and mutual funds with combined assets in excess of 1.5 billion dollars.

New York Stock Exchange Proposals

Proposal (1): Incorporate a Volume Discount in the Minimum Commission Schedule, the Amount and Nature of Such Discount to be Subsequently Determined.

All reductions in commissions will be welcomed so long as orderly securities markets with adequate breadth and depth are maintained. We are hopeful that determination of the type of discount to be granted will take into account the cost involved in the transactions undertaken. It would appear if costs absorbed say 50% of commissions on a \$10,000 transaction (and were relatively fixed regardless of the size of the transaction) they would absorb only 25% of commissions on a \$20,000 order and only 5% on a \$100,000 order. These mathematics would mean that a quantity discount should be initiated at relatively low levels if cost-savings is the justification for resultant discrimination against the small investor.

Discounts based upon the volume of a particular investor's transactions over a specified period of time would seemingly be grounded on saving the salesman's commission required to solicit the public but not required to obtain business from the institutional investor. If sustainable on this basis, it would appear that the granting of a discount should be determined by the type of investor rather than

the volume of investment. Certainly no other cost savings accrue from a series of small transactions from a single investor as compared with a series of the same number of small transactions for a number of investors, once the investor's accounts are established. To predicate discounts solely on the economic power of large investors would appear to reduce competition among institutional investors by forcing higher costs on those with smaller portfolios.

Proposal (2): Support Continuation of the Practice of Customer Directed Give-Ups on Their Own Transactions With a Limitation on the Percentage Amount Which May Be Given Up. (It is Assumed From the Analysis of the Exchange Proposal in Release No. 8239 That This Proposal is to be Interpreted to Include Give-Ups to Non-Member Brokers.)

It is our understanding give-ups are granted in recognition that on some transactions commissions must either be shared or the business from which they are generated would not otherwise be obtainable. Accordingly, courtesy give-ups directed by individual investors should not be affected. However, if substantial quantity discounts can be offered to institutional investors in lieu of give-ups in recognition of sales efforts it is difficult to justify continuation of existing practices.

The obligation of the institutional investor to save costs, though, must not be allowed to obscure the primary concern of the investment manager of achieving the best possible performance within the framework of his investment objectives. The present practice of utilizing give-ups to compensate brokers for research and statistical information procures an irreplaceable potential benefit for his clients. Give-ups for this purpose should, as proposed, be made available for non-member brokers as well as exchange members since there is no monopoly on valuable investment information.

Proposal (3): Take Steps to Prohibit Reciprocal Practices Which Result in De Facto Rebates of NYSE Commissions Even Where These Arrangements Involve Other Markets Than the NYSE Floor, Provided that the SEC Will Aid in Prohibiting Such Practices in Other Markets.

Should adequate quantity discounts be initiated, or modest quantity discounts coupled with release of restrictions on give-ups from NYSE members to non-member broker-dealers be allowed, customer directed reciprocal practices would no longer appear to have a functional basis. Nevertheless, to the extent needed to assure the maintenance of orderly markets with adequate breadth and depth to handle sizeable transactions at or near current prices, debilitating reciprocal practices should be eliminated.

The SEC when requested to aid in prohibiting practices which disrupt the functioning of orderly markets might also consider in the case of sales of mutual fund shares prohibiting member firms of the NYSE from considering the volume of portfolio transactions placed with them by a fund in determining whether that fund will be placed on their preferred list of funds to be sold to investors. This is certainly an undesirable reciprocal business practice from the viewpoint of investment company managers.

Proposal (4): Allow a Discount in the Minimum Commission Schedule for Non-Member Brokers, Both Domestic and Foreign, With Qualifications to be Specifically Defined Subsequently.

Competition among securities firms would appear to be furthered by allowing non-member brokers to obtain a discount in the minimum commissions schedule. It is suggested that in the establishment of qualifications, non-member brokers who are also underwriters for mutual funds or who act as brokers for affiliated companies, should not be discriminated against by exclusion. Whether a broker handles transactions directly for the public or indirectly for the public by handling institutional transactions should not be a basis for preventing the institutional broker from acting as a conduit for cost savings to his clients.

Proposal (5): At the Order of the SEC to This and Other Registered Exchanges, Adopt Rules Limiting Membership and Broker-Dealer Allowances to Bona Fide Broker-Dealers. (It is Assumed from the Analysis of the Exchange Proposal in Release No. 8239 That This Proposal is to be Interpreted to Prevent "Institutional Membership" on Exchanges.)

It is submitted that, as an alternative, consideration should be given to an order of the SEC to the NYSE and other exchanges to eliminate present restrictions on memberships by institutions. Institutional investors have, to date, offered advantages of diversification and professional management supervision to small investors by aggregating the capital of groups of such investors seeking a common investment objective. No reason is seen why these benefits should not be broadened to include the advantage of consummating portfolio transactions on the same favored basis as available to members of securities exchanges.

Provisions that institutional investors applying for membership possess the expertise and responsibility requisite for exchange membership would be expected and appropriate in protecting the interests of the public; restricting competition under the umbrella of artificial limitations would appear to us to violate the spirit if not the letter of the anti-trust laws.

Proposed Commission Rule 10b-10

Prohibiting investment managers from directing give-ups or reciprocal business on portfolio transactions, unless paid over to the originating investment companies, would seemingly present such managers with three alternatives.

The manager could seek membership on the various exchanges. In so choosing, substantial expense would be involved, a broad sales base could be undermined and impossible restrictions might be faced by publicly owned companies affiliated with other types of businesses.

Confining the placement of orders primarily to a few select brokers deemed most capable would sever relationships with many other brokers now providing valuable investment information and sufficient sales to maintain an economic size. Should the brokers selected reciprocate with near-exclusive fund sales, both conflict of interest and suitability problems could arise.

Expanding the number of firms used to consummate portfolio transactions could, on the other hand, subject the fund to higher costs for its trading department and expose it to indifferent efforts from many executing brokers.

Sincerely yours,

George W. Fulk
Counsel