

**WEEDEN & Co.**  
INCORPORATED

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October 30, 1970

The Board of Governors  
National Association of Securities Dealers  
888 Seventeenth Street, N.W.  
Washington, D.C. 20006

Gentlemen:

On December 16, 1968, the NASD by full membership vote overwhelmingly adopted by-laws to implement the NASDAQ System and provided that third market securities could be included. At that time, I requested confirmation that no discrimination would be practiced "by the NASD in making available the NASDAQ system to listed stocks which enjoy an active over-the-counter market." I received a prompt reply from the Director stating that "no security will be excluded from consideration in the System because it is also listed on a stock exchange."

Relying on those assurances, Weeden & Co. joined NASDAQ and one of our officers, as a member of the Board of Governors, extended himself in promoting NASDAQ to other members of the NASD. As recently as the Pebble Beach meeting of the Board of Governors in late September, at which the promotional package on NASDAQ was given its first full presentation to the industry, there has been no suggestion publicly or privately to us that this basic policy was subject to change. See for example the October 31, 1970 edition of Business Week "The Gambling Game on Wall Street," describing NASDAQ as including listed stocks.

On October 9, 1970, the President of the American Stock Exchange wrote the Securities and Exchange Commission and the NASD urging that third market securities be eliminated from NASDAQ. On October 13, 1970, the President of the New York Stock Exchange followed suit.

On or shortly before October 20, 1970, the President of the NASD met with the Chairman of the Securities and Exchange Commission and discussed with him the elimination of third market securities from the NASDAQ System.

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On October 20, 1970, by telephone vote, the Executive Committee of the NASD "met" and reversed that two-year policy that included third market securities in NASDAQ. All six members of that Executive Committee are associated with firms who are members of the New York Stock Exchange.

On October 22, 1970, the President of the NASD prepared and delivered by hand a request for comments from the full Commission on the elimination of third market securities from NASDAQ. The same day, the President says he was informed that the Commissioners had unanimously approved this boycott.

On October 23, 1970, the full Board of Governors of the NASD were solicited by telephone and by mail to ratify these acts. The only documents given the Governors in soliciting their vote were the letters from the Presidents of the New York Stock Exchange and the American Stock Exchange to the Commission, the President's letter to the Commission, a set of the by-laws marked up to reflect the proposed boycott, a list of the third market stocks proposed for NASDAQ, and a covering memorandum expressing the belief that the Commission would approve the boycott. Interestingly enough, in their unseemly haste to get ratification of this boycott, the officers of the NASD have not waited to receive from the Commission its written views. As of this time, I am informed, the NASD still does not know officially the Commission's position. Absent that written statement of the Commission's policy, I question the propriety of the officers of the NASD soliciting the Governors in this important matter on the basis of their guess of what the Commission will or will not do.

On October 27, 1970, I met with Messrs. Teach, Macklin and Derrickson of the NASD and asked them to reconsider this ill-conceived, and in my view, illegal boycott. My request was refused. The same day I met with the Chairman of the Commission and expressed my dismay at this abrupt, apparent approval by the Commission of a boycott of third market securities. Judge Budge informed me that in his opinion this was not a reversal of position by the Commission since the comments previously expressed against any boycott of third market securities were those of the staff of the Commission and not the Commissioners.

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The sequence of these events can only bring into question the independence of the officers, the Executive Committee and the Board of Governors of the NASD from the economic power and influence of the New York Stock Exchange and the American Stock Exchange.

To my knowledge, the Board of Governors has not been furnished with any memoranda advising them on the reasons for or the legality of what they have done, nor have those directly affected by this discriminatory act been given an opportunity to be heard. I find it difficult to accept the proposition that as Governors of our industry's most important trade association, your vote on this critical matter is obtained without a meeting being held at which those Governors opposed to this boycott are given an opportunity to set forth their reasons, or alternatively, that those third market houses and other non-member broker dealers affected by the boycott are given an opportunity to be heard.

Accordingly, as a member of the NASD whose vote of December 16, 1968, has been rendered a nullity by the actions of this Board of Governors, I request the following:

1. A meeting of the Board of Governors be called to permit full discussion of the proposed amendment to Article XVI eliminating third market securities from NASDAQ, and that pending such meeting, the President be instructed to take no further action to implement this boycott;
2. A memorandum be prepared by the officers of and counsel to the NASD advising the membership on the reasons for and legality of excluding third market securities and on the exclusion of third market securities from the System at this late date; and
3. Representatives of members affected by this boycott be given an opportunity to be heard.

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The significance of boycotting third market securities from NASDAQ at the last minute at the request or suggestion of the New York Stock Exchange and the American Stock Exchange should not be lost on members of the NASD. NASDAQ represents the most important action by the NASD in modernizing the techniques for buying and selling securities and ultimately in automating the clearing of those transactions. The New York and American Stock Exchanges do not own the securities they list. They simply afford their members one place where they can meet to do business. If other more modern, efficient and less costly markets are available, especially to non-members, all brokers should be given free and easy access to those markets. That is what the Central Market is all about. NASDAQ is the way of the future and Weeden & Co. wants to be part of that future. For two years we have been told we would be on the System. We paid our money and helped promote the System. Now comes the New York and American Stock Exchanges at the eleventh hour and by a telephone vote of the NASD's Executive Committee suggests or causes a complete reversal of policy. Quite plainly, that is wrong. Neither the Executive Committee, nor the Board of Governors are elected to represent their respective firms. They are entrusted to represent all of the members of the Association and the public. This, they have failed to do.

Very truly yours,

Donald E. Weeden  
Chairman of the Board

DEW:ph

cc: Securities and Exchange Commission

NARA-CP

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Subj Files 34-81

Box 71 Folder "National Association of Securities Dealers, Vol. 17"