

February 25, 1965

Dear Gaston:

Thank you for your letter of February 17.

I have looked into the case referred to in the Wall Street Journal article which you attached. It appears that the Wall Street Journal reporter, who presumably is not a lawyer, misinterpreted to a considerable degree the legal arguments made by Mr. Loomis on behalf of the Securities and Exchange Commission and read into them several things which weren't there. Plaintiffs in the lawsuit involved contended that the National Association of Securities Dealers had no legal authority to make any substantial change in its newspaper quotations system. In reply to that argument, Mr. Loomis referred to the Securities Acts Amendments of 1964 and particularly to the fact that Congress inserted an express reference to NASD quotations in the statute. He also pointed out that the Congressional committees which considered this legislation expressed an intention that the quotations problem be dealt with. Thus, the Senate Committee on Banking and Currency, after referring to the recommendations of the Special Study of Securities Markets with respect to quotations, said:

“As stated, the purpose of this amendment is to clarify the authority of associations in this area and impose upon them an obligation to act.”

The House Committee on Interstate and Foreign Commerce in its report was equally emphatic:

“Action must be taken on the very important matters of the protection of customer credit and securities balances, the roles of the specialists and floor traders, meaningful quotations for over-the-counter trading, and many others.”

It was in the light of these Congressional statements that Mr. Loomis suggested to the Court that if the Court were to hold that the NASD had no authority to act in this matter, then it would be necessary for the Commission to explore other possible ways of carrying out the Congressional intention. No threats were made and specifically there was no suggestion that if the NASD could not act, the Commission would adopt the so-called “package of over-the-counter pricing reforms” to which the Wall Street Journal

refers. This, as the article makes clear, is mere speculation on the part of the reporter. Mr. Loomis went on to point out the Commission's belief that Congress intended that the NASD should have the necessary authority and its belief that a holding to the contrary would greatly complicate the situation. Mr. Loomis was not "chastising" anyone when he urged the Court to hold that the National Association of Securities Dealers, an official industry self-regulatory body, should have authority to take action with respect to this problem and that a holding to the contrary would frustrate the express Congressional purpose of seeking resolution of the questions presented by the quotations system through the medium of the NASD. I am sure you will agree that this method is preferable to direct action by the Government, whether or not you agree with the procedure evolved by the NASD. This approach seems entirely consistent with the President's remarks upon signing the Amendments to the securities laws on August 20, 1964. On that occasion the President said:

"Industry and government have worked together in the writing of these laws. Industry and government will work together in making these measures succeed."

I appreciate your concern with this rather difficult problem, and I want to thank you for calling it to my attention.

Sincerely,

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Special Assistant to the President

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