

New York Stock Exchange  
New York, NY

July 2, 1967

The Honorable Manuel F. Cohen  
Chairman  
Securities and Exchange Commission  
500 North Capitol Street  
Washington, D. C. 20549

Dear Mr. Chairman:

The survey which I mentioned in my letter of June 13, 1967 has now been completed. We contacted 15 member firms which have traded with non-member market-makers under Rule 394(b) and 15 member firms having no such transactions.

Twenty-six of the thirty member firms questioned stated that they receive satisfactory executions and prices on the Floor of the Exchange. Therefore, in their opinion, there is little need or incentive to go to markets off the Floor. This member satisfaction with the executions on the Floor is the primary reason why most firms have not gone off the Floor under Rule 394(b).

On the other hand, the comment by some of the firms that the off-Floor technique has proven most useful in markets in the more stable, relatively less active utility and bank stocks is most interesting. For example, 78 of the 90 transactions consummated either in part or completely off-the-Floor during the period November 75 1966 through July 3, 1967 were in utility (69), bank (7) and insurance (2) stocks. This is approximately 37% of all the transactions. In addition, of the total 406,105 shares bought or sold off-the-Floor, 312,205 shares were in utility, bank and insurance stocks. This, is approximately 77% of the total shares traded.

Several firms also stated that making inquiries of the several non-member market-makers registered in a given stock would be time-consuming, particularly since speed in executing orders is usually essential. In stable, relatively inactive stocks, such as utilities, where the bulk of 394(b) trades occur, the time factor is not as important.

Another reason given to support the view that contacting the Third Market is not normally productive is that a customer which deals in large blocks -- usually an institution -- is relatively sophisticated and possesses knowledge of where the

best markets exist. If an institution believes it can obtain a better price in the Third Market, it will usually contact the non-member directly rather than a member firm. Therefore, members believe they are consulted only after the Third Market has already been checked.

An additional reason given by several firms is that they often act as dealers in helping to fill customers' orders, and thus have little need for dealing with Third Market makers.

We find the response of these member firms quite interesting because they are based upon approximately eight months' practical experience with the Rule. As you know, many claims concerning the availability of better prices in the Third Market were made prior to the adoption of Rule 394(b).

In summary, we conclude from the comments of these 30 representative firms that the basic reason for the relatively infrequent use of Rule 394(b) is the fact that member firms still find that the most satisfactory executions can be obtained on the Floor of the Exchange. Rule 394(b) provides the mechanism by which member firms who find otherwise when holding specific orders can go off the Floor. If, as the member firms questioned indicate, Floor prices are generally satisfactory, it cannot be surprising that the procedures of Rule 394(b) have not been invoked more often.

The Exchange wishes to be of continuing assistance in this matter and will be glad to cooperate with you.

Sincerely,

G. Keith Funston  
President