

Howard, Weil, Labouisse, Friedrichs and Company
Investment Securities
New Orleans, Louisiana

February 1, 1968

Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

RE: Securities Exchange Act of 1934 Release #8239

Gentlemen:

This is in response to your request for comments on:

- (1.) Proposed Rule 10b-10, under the Securities Exchange Act of 1934 and,
- (2) The proposal of the New York Stock Exchange for certain revisions in its commission rate structure; in consideration of the Commission,
 - a) supporting the practice of customer directed give-ups
 - b) taking steps to prohibit reciprocal practices which result in rebate of New York Stock Exchange commissions on other stock exchanges, and
 - c) limiting membership on all registered exchanges to bona fide Broker-Dealers.

It should be made clear that the views expressed in this response are those of the Partners of Howard, Weil, Labouisse, Friedrichs & Co., of New Orleans, Louisiana, a regional member firm of the New York Stock Exchange, and in no way are to be construed as the views of the regional Firms Advisory Committee of the Cost and Revenue Committee of the N.Y.S.E., of which I am a member, or of the Board of Governors of the Association of Stock Exchange Firms, of which I am also a member.

We oppose the adoption of proposed Rule 10b-10 for the following reasons:

- (1) There is nothing basically wrong with a registered investment company, or persons affiliated with registered investment companies, doing business with the firms who sell their shares. The sales effort of these firms produces the funds which are subsequently invested. If the commission cost to the investment

company is the same (and it must be made to be the same), there is no reason why the business should not be done by or through these firms.

(2) Experience over a period of years has indicated that the most efficient way to handle the execution of the relatively large orders placed by most investment companies is through the use of what is called the "lead broker" concept, whereunder one broker of particular competence in the execution of a particular order, is given the order to execute, with part of the commission being directed to other exchange members. Rule 10b-10 would abolish this concept, and cause the large orders to be fragmented by being placed directly with the firms to whom the investment companies wish to direct this business, to the disadvantage of the investment company and its shareholders.

We strongly urge your adoption of the proposals of the New York Stock Exchange for the following reasons:

(1) Large Investors, especially large investment companies, are entitled to a volume discount since, as you point out on Page Two of Release #8239, "it does not cost a broker anywhere near 100 times as much to execute a 10,000 share order than to execute a 100 share order".

(2) The continuation of the practice of customer directed give-ups will permit investment companies to avail themselves of all of the advantages of the lead broker -concept, at the same time, putting a portion of the commission dollar in the hands of other stock exchange members who have indirectly generated the business through the sale of the investment company's shares.

(3) As you point out in your release, reciprocal practices which have developed between members of various exchanges only serve as a means of circumventing exchange rules, and tend to divert orders away from the central market place thereby weakening the depth and liquidity of the market. These practices should be prohibited.

(4) The New York Stock Exchange has been late in recognizing the contribution which non-member broker-dealers make in generating business for the central market place. The present proposal to allow a discount in the minimum commission schedule for non-member brokers should be supported.

(5) It is our opinion; that membership on all registered exchanges should be limited to trained professionals, the major part of whose full time business is the execution of transactions in investment securities.

A careful study of your release indicates to us that you are presently in substantial agreement with the general import of the Stock Exchange's proposals with respect to:

- (1) Incorporation of a volume discount in the commission schedule;
- (2) The advantages in the elimination of reciprocal practices which are resulting in abuses, and,
- (3) The allowance of a discount for non-member broker-dealers (if this cannot be implied from your release; it can be implied from your approval of the practice on the regional exchanges.

This therefore leaves the matter of customer directed give-ups, and the matter of the limitation of membership on the exchanges to bona fide broker-dealers.

In the matter of customer directed give-ups, your proposal of Rule 10b-10 puts you squarely on record as being diametrically opposed to the Exchange's proposal in this area. We urge you, therefore, to give serious consideration to a reversal of your present position, in the interest of the investment companies and the Stock Exchange member firms, particularly the regional firms such as ours. We agree wholeheartedly that there have been abuses in the use of customer directed give-ups. We believe, however, that you have the authority and the capability to eliminate the abuses without burning the house down to get rid of the rats. We also believe that, in the long run, competition will serve to eliminate one of the major abuses, which is the churning of investment company portfolios in order to develop commissions which in turn are directed to the firms selling the investment company's shares. As long as portfolios can be churned profitably; their shares will be able to be sold. Whenever the churning is solely for the purpose of generating commissions or whenever it becomes unprofitable; the shares will not be able to be sold. Furthermore, it is our opinion, that investment company managers under existing laws have the responsibility to deal properly with the funds placed under their control, and your surveillance should permit you to punish those who are acting improperly.

We firmly believe that investment company shares properly managed and properly sold are good for the investing public. We also firmly believe, that if we place our clients' funds in these investment companies, that we should be entitled to share in the commissions paid by the investment companies for investment and re-investment of those funds. We also firmly believe, that the adoption of Rule 10b-10 would cause the investment companies to place portions of their orders with us, and other regional firms, since they all recognize that we are deserving of these commissions. We believe, however, that to force

the investment. companies to fragment their orders in order to accomplish this, would be a major disservice to the investors in the investment companies, since the orders would not be executed anywhere nearly as efficiently as under the "lead broker" concept.

As to the matter of limiting exchange memberships to bona fide broker-dealers, we recognize this as a deep philosophical question. We do believe, however, that it is a necessary adjunct to the preservation of a minimum commission schedule, for reasons which you mention in your release and for others which are obvious.

Since, as you point out, the Stock Exchange's proposals still have certain "specifics" to be resolved, we would like to comment on some of these as follows:

(1) It is our opinion that the Volume Discount would take the form of an overall discount allotted to large investors based on their dollar commission volume, either those paid in the previous year, or those they will pay in the current year. From a "back office" standpoint, this would be far easier to deal with than a discount based on orders as they are placed. It would also permit the smaller firms to compete on an equal basis with the larger firms, which might not be the case if the discount were based only on the size of an order. We believe these discounts should range from 10% to 30% based on the volume of commissions paid.

(2) Inasmuch as the going rate for floor brokerage and clearance is in the 20%-25% range, we do not believe a limitation of 50% (as suggested) as the amount the "lead broker" should be required to retain, is realistic. Present practice indicates (if clearance and floor brokerage could be done economically for 20%-25%) that 75% of the commission is proper compensation for developing the business and generating the order. We believe, therefore, that a 25% required retention by the "lead broker" would be a more realistic figure.

(3) In the area of discounts to non-members, we believe that it is important that this discount be not less than 30% and not more than 40%. Most firms pay their representatives 30-33 1/3% of stock exchange commissions for generating the business. Since other direct costs such as, long distance telephone calls, secretarial assistants, research and publications are furnished them, the total outlay for the generation of commissions might run up to 40%. This is how we have arrived at our suggested percentages. A lower figure than 30% would amount to an insufficient incentive, and a higher figure than 40% would serve to make it possible for non-member firms to actually have a competitive advantage over member firms.

We are appreciative of the opportunity of being able to make these comments on your proposed Rule 10b-10, and on the proposals of the New York Stock Exchange. Thank you very much indeed for giving them your consideration.

Very truly yours,

Howard, Weil, Labouisse, Friedrichs and Company

By G. Shelby Friedrichs