SHUMATE & COMPANY, INC.
Dallas, Texas

February 1, 1968

Mr. Orval L. DuBois
Securities and Exchange Commission
Washington, D.C. 20549

Dear Mr. DuBois:

SEC Release No. 8239 invites views and comments on Proposed Commission Rule 10b-10 and also certain New York Stock Exchange proposals.

It seems to this firm that both the Exchange and the SEC proposals have certain merits, but also have consequences which might be injurious to other segments of the investment business, namely, regional exchanges and non-member broker/dealers. Proposal 3 of the NYSE would eliminate reciprocal practices, which would probably mean an end to the regionals, which exist largely on this reciprocal business. (Both customer and broker directed). The SEC proposal would, also affect another member of the investment business, the non-member dealer who sells fund shares. He would no longer receive additional compensation but NYSE members would very happily find their income suddenly increased because they no longer would have to give up any part of the commission; nor would the institutions receive any benefit as all their business would necessarily go to even fewer firms, cutting them off from ideas and contacts from non-member firms. To aid large dealers and injure small ones seems quite against the American tradition.

We endorse in part the SEC principal that if any part of the commission can be given up, it should accrue, to the benefit of the beneficiaries.

Would it not be better to go to the heart of the matter? Basically, it seems to us that it is this: non-member brokers do have contributions to make to institutions and to the liquidity of the markets in general. In the matter of mutual fund matters, the contribution they make to a continuing flow of orders is important to the funds and the securities markets and hence to their beneficiaries. Their investment advice could be important if they received compensation for it. Practically speaking, non-members are shut off from normal compensation by the fact that the NYSE has a monopoly in trading in loading stocks of this country. Institutions, therefore, have worked out clumsy and devious means by which they force NYSE members to give some compensation to these independent brokers. Changing this NYSE monopoly, unparalleled in American business, would greatly simplify the whole procedure and correct inequities both to institutions and to non-member brokers.

We therefore propose:

1. Quantity discounts for institutions on the NYSE of a certain amount, with a greater discount for non-member dealers, so that independents can directly obtain compensation for their advice and services.

2. Adjustment of the SEC 2000 per cent rule to allow scaling down of financial requirements on such orders; otherwise, small dealers would be unable to handle large orders with only a small part of the commission to compensate them. Volume discount proposals by the SEC and exchanges have to date, so far as we have noticed, ignored this important consideration.

3. Prohibition of customer directed give-ups as now proposed by the SEC, but accompanying this, an SEC requirement that regional-exchanges and the NASD be prohibited from having NYSE members on their boards. This would enable the Third Market and the regionals to develop other ways of competing for business than the present give-up source. At present, the regionals and the NASD are vassals of the NYSE, and are not effectively providing competition for the NYSE. Free enterprise could then have the opportunity of providing them means to recover from what would at first be a severe blow to their business. The Special Study is on record of approving the role of the Third Market and the regionals in securities trading.

In closing, we would like to say that it is difficult to comment on the proposed NYSE rules because an important part of a principal change is not only the change, but the degree of change. The NYSE in the past has shown no tendency to adapt to any change which would lessen their monopoly. They allow up to 75 per cent rebates for institutional use but nothing to fellow non-member brokers. While giving lip service to fairness, they demonstrated in the Silver Case a complete disregard for the rights of non-members and in the matter of Rule 394, adopted certain changes which appeared to effect needed changes but which in fact we all know changed nothing. The present proposal of the NYSE is in keeping with this, requesting SEC help in eliminating all reciprocal practices (including presumably broker directed reciprocals as wall as customer directed). This of course is an attempt to stamp out the regionals with SEC help.

If the size of the independent broker discount is not meaningful or the qualifications of a monopolistic nature to suit their own ends (as frankly we expect them to be) the Third Market might be throttled.

We would urge therefore very careful scrutiny by the SEC of the <u>specific</u> NYSE proposals, as they have never demonstrated nor do they now, a desire to do anything but perpetuate their present monopoly.

Very truly yours,

SHUMATE & COMPANY, INC.
Gaston A. Shumate