

Baer Securities
New York, NY

February 29, 1968

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

Gentlemen:

We submit the following comments for your consideration. We request that they be treated as confidential.

In the interest of fostering healthy competitive markets, we believe that give-ups per se are not detrimental; in fact they can contribute to the maintenance of orderly markets. This can be accomplished by permitting an institution to direct its orders to one firm at a time, and instruct that firm to "give-up" a portion of the commission to another firm. This, in effect, gives the true picture of one seller rather than scattered selling through various brokers that could be misinterpreted by the specialist or market maker.

Not all broker-dealers can be members of the NYSE. The reasons for this are manifold (quite apart from capital requirements). We know of several firms that prefer retaining their close ties with other members of the financial community rather than alter a long standing relationship for the sake of admission to the NYSE. At least one substantial firm cannot be a member because its shares are in the hands of the public. (Whether it wishes to be a member, we do not know.) Baer Securities Corporation cannot be a member firm because it is foreign owned, although the company is managed by Americans, in accordance with the Securities laws and the rules of the PBWSE; and its Senior Vice President (American born) was a Member of the NYSE in his previous connection. The stigma of "Foreign money" has been lifted in the case of Canadians, but national origin still appears to be a matter of importance to the NYSE.

Unless membership in the NYSE is open to all that wish to join who are members in good standing in the American broker-dealer community, the prohibition of give-ups will stunt the growth of regional markets and exchanges, and make their facilities in Chicago, Philadelphia, Los Angeles and San Francisco nothing more than tourist attractions akin to the ghost towns of the West.

We question the validity of the statement on page 5, paragraph 3 of the Exchange Act Release 8239, which states that the sole member of a regional exchange acting as clearing agent "performs no function except the largely unnecessary one of guaranteeing performance by the NYSE member". The sole member of a regional exchange has performed another function, and that is he has channeled other commission business through the NYSE member. Let us say broker "A", a member of the PBWSE, receives a large order to sell 20,000 shares of a dually listed stock. Because of hectic markets and keeping the interest of his client in mind, he has no time to search for a buyer away from the auction markets. The smaller market in Philadelphia is unwilling to buy the stock. Broker "A" then executes this order in New York via a member who is willing to reciprocate with other business in Philadelphia. If reciprocity were not a factor, broker "A" would have no interest in doing this transaction, and over a period of time these orders would go only to broker-dealers who are members of the NYSE. Broker "A" still encounters clearance expenses and to execute the order for less than normal reciprocation becomes economically unrealistic.

Broker "A," although not a member of the NYSE, may be a capable broker, with a good market sense, in whose hands such an order should be entrusted. To deprive him of the means of using his skills because he cannot join the NYSE is an intolerable form of monopoly.

The broker through whom broker "A" would execute this order suffers because although he is competent, gives fast service and serves a function of trying to broaden regional markets, his only means of securing this order is by being able to reciprocate to broker "A". Although he is acceptable as a member of the NYSE his investment in this seat becomes less valuable to him because his location away from New York obviates his chances to be either a floor broker earning partial commissions, or a specialist where he can utilize his skills and capital. He can become a retail firm and compete with the giants of the industry, but this requires an entirely different set of skills and overhead beyond that which he might be capable of sustaining.

Why does broker "A" get the order? Good business sense dictates that business be directed to those brokers that do something for the client. There is nothing shameful in the word "reciprocity" when used, in the normal bounds.

If we perform services, whether these services be in the form of research, market "how-how," sales effort (for funds), relationships (with banks), or bona fide services performed in any manner, why should they not be rewarded? These orders clearly should not go to disinterested parties who are merely commission earners and do not truly "know their customer" because they do not have a more

intimate relationship with him. Though abuses of give-ups have occurred in the past, why punish all for the abuses of a few?

The New York Stock Exchange proposal to permit sharing of commissions with certain non-NYSE members is not an acceptable alternative to regional give-ups; it is however a desirable adjunct to them, provided the percentages are fair. At the time of writing the NYSE has not disclosed either percentages or who the eligible participants would be.

We suggest the following:

1. Permit give-ups between members of regional exchanges on orders executed on such regional exchange, whether they be client-directed or otherwise.
2. Permit non-members to share in commissions derived from NYSE up to 40% if the name of the principal is disclosed, and up to 50% if the non-member clears the transaction on a non-disclosed basis.
3. All members of regional exchanges should be included in the NYSE commission sharing plan; however, to forbid the regional give-up as we know it today for a split commission plan would be sacrificing the regional exchanges, and the staff and executives of these exchanges who have worked so diligently to broaden the best interests of the public (for after all some orders do originate elsewhere but New York) .

Other interested parties should be considered, such as third market firms and other non-exchange members, but I am sure they can speak for themselves.

We concur with the SEC that reduction of commissions on block trades is a desirable goal. This reduction should also be effected in the OTC market to obviate give-ups OTC and to permit clients in a fiduciary capacity to direct such business to parties not known as market makers, but who may be known as good market mechanics, without the fear of being criticized for interpositioning for a market maker, when said market maker may not be a suitable credit risk for the principal, or a desirable counter-party for other reasons best known to him.

With respect to broker-dealer firms that are controlled by interested institutions: Proper supervision should be maintained at the industry level to insure these firms perform a useful function in the securities business and are not solely conduits for internally generated commission business.

Respectfully yours,

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per Donald E. Williams
Senior Vice President
Baer Securities Corporation, N.Y.