Bosworth, Sullivan & Company, Inc.
Denver, Colorado

March 9, 1968

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

Re: Proposed Rule 10b-10

Gentlemen:

You have invited comments from Dealers such as ourselves, on your Proposed Rule 10b-10 which is aimed directly at the question of a registered investment company allocating parts of its commissions, paid in connection with purchases and sales of securities in its portfolio, to dealers other than those who actually execute such purchase and sales orders.

We feel that this proposed rule is based on two premises, the first one being that commission rates are too high, at least at the volume level of transactions such as Mutual Funds frequently achieve; otherwise the monies to pay out to others would not be available. We think this is false reasoning, but if this is the premise, then we think that the proposed rule 10b-10 should not precede a careful study of the commission charge. Such a study is being made by the New York Stock Exchange and we feel that the imposition of any such rule as the proposed 10b-10 should certainly await action on any advisable changes in commission rates.

We feel that the second premise upon which 10b-10 is based is that the fact that a broker who executes buying and selling orders for Mutual Funds is willing to permit the allocations of some of the commission charges to other dealers is proof that those commission charges are too high and that, in fact, the Mutual Fund is not getting its money's worth when it pays those commission charges.

We cannot accept either of these premises and our thinking is as follows:

1. Commission rates for securities transactions are, we think, a bargain by any comparison with fees for other professional services -- legal, medical, management advisory, or otherwise. We feel that they are bargains as compared with many fees and charges for services involving skilled labor. The fact, if it be a fact, that any of these professional, or skilled labor, services can be performed for less money under certain circumstances or in certain volume amounts, does

not, per se, prove that these charges are too high or that they should come under governmental attack. Competition has been a fairly good regulator of fees and services over individual business and professional men in the United States. We suggest that, in those activities in which competition does assert itself, and we think that applies to the securities business, the government should not inject its authority to dictate what service charges, commission charges, prices, etc. should by made by private industry.

2. For these commissions, our economic and capitalistic system gets a fair, fast and efficient marketplace for the evidences of its ownership and its borrowings.

3. So important is this system to the nation that the services it is called upon to perform now tax its physical facilities. Large expenditures are required both in the field of research and additions to physical plant and equipment in order that the securities industry may take care of the present demands, and future expected demands, for its services. We submit that it is a poor time to divert or cut off the income of those who are charged with providing these services.

4. The ability to serve small investors, even at a loss, is dependent upon the profitability in handling the larger securities orders. Thus, we feel that a change in commission rates, or a change in the distribution of industry income, could impair the services now available to the smallest investor as well as the largest. Particularly, it could affect those services now available to the investor who does not choose to use the Mutual Fund vehicle for his investment program.

5. The Mutual Fund must, for the benefit of its shareholders, seek opportunities for profitable investment, must maintain every avenue for information, and these requirements are met by allocating commission payments to suppliers, or potential suppliers, of investment information and advice.

6. The Mutual Fund is a living investment vehicle; the same door that swings in when the investor buys its shares swings out when the investor sells -- no matter what the reason for selling might be. The interests of the seller are best served by having a live and active facility for the continued sale of its shares to new investors. Certainly, enforced sale of its assets to meet the request of a selling stockholder might do harm to the remaining stockholders. The maintenance of a live and active facility is, we think, justification for the allocation of commissions from time to time by Mutual Funds to dealers sales organizations.

7. We think that the Mutual Fund and its shareholders get their money's worth, that commission charges aren't too high, and that the allocation, whenever deemed advisable, of these commission charges for services in advisory, informational, or sales service, is justified and for the best interests of its

shareholders. Rule 10b-10 is conceived to negate all these considerations in which we believe. We think it is wrong.

8. Rule 10b-10 would impose a restriction against the payment of any part of commissions on any securities transactions to any broker-dealer or any other person, "unless pursuant to a written contract, fees owed by or charged to such registered investment company are required to be reduced (by said broker or dealer) in an amount equal to such compensation". (The words in parenthesis are ours.) We assume that such "written contract" might be for a service heretofore rendered to the registered investment company, or presently being rendered, or a standby service or obligation not yet fulfilled. We submit that the various services that a Mutual Fund received, and may stand ready to pay for, do not always lend themselves to a contract with fixed terms. If they were contracted for, would Rule 10b-10 require that each such contract be subjected to approval by the Securities & Exchange Commission? If this be true when 10b-10 is imposed, and we hope it is not imposed, would the Commission then set forth the terms of a contract that might be acceptable to it? Wouldn't the next step be the approval in advance by the Commission of all acts, investment decisions, expenditures for investment analytical information, and the use of sales media? If the Commission tells a Mutual Fund that it cannot allocate any commissions to certain dealers for services which the Mutual Fund managers think deserve such allocations, then would the Commission tell each Mutual Fund with whom it shall do business and to whom it may pay commission charges? If the Mutual Fund wishes, for its own reasons, to divide a "block" selling order and to give a certain broker part of the "block" order, might not the Commission say that such an act would not be in the best interest of the shareholders, and direct that such order be given in its entirety to another broker? (This last question obviously refers to a Mutual Fund dividing its buying and/or selling order among several brokers instead of letting a "lead" broker handle it with allocation of parts of the commissions to other brokers.)

9. We submit that the explanation for Rule 10b-10 is replete with statements of transgressions on the part of Mutual Funds, but the proposed punishment for such transgressions is to upset, and, in our opinion, do harm to the entire structure of our securities operations; certainly harm would be done to the Regional dealer. We suggest that a careful, understanding type of study of the commission rate structure, as proposed by the New York Stock Exchange, be made. We suggest that, based on such a study, reasonable regulations as to a Mutual Fund's right to allocate commissions be worked out. We think proposed Rule 10b-10 is not reasonable.

We are a so-called regional dealer. We serve small investors as well as large ones. We maintain a close personal relationship with our clients and with our community activities. We have been a part of the great national group of

investment dealers, impossible to define, but comprising the whole fabric of our national investment facilities organization. Our relationships, one with another, have always been that we would direct or allocate business to other dealers, whom we have learned to respect, when we felt that our clients' best interests would be served by so doing, and we felt that somehow, some time, without a "contract", we would, in turn, receive from those other dealers some business and allocations. This inter-relationship, without contract, has been a part of our nationally successful securities marketing and financing operations. We never felt that we had to compete in every area of the country to maintain our capability, our integrity, and our profitability, but could do our part in the overall picture, by being "tops" in our own region and relying on the undefined "reciprocal" relationship with dealers and clients in other regions to create a national service. We don't think you can prove that you are working for the good of investors generally, large and small, in the United States, by breaking down that relationship.

The imposition of Rule 10b-10 might deprive us of annual income of a "reciprocal" nature earned, we think, by various services we have rendered; these various services include selling Mutual Funds and servicing Mutual Funds investors. The loss of this income would be serious. Are you sure that our loss, and that of other regional dealers like us, will benefit the small, average, or even the large investors in this country?

We thank you for this opportunity to express our views to you.

Sincerely yours,

Paul E. Youmans
Executive Vice President