

New York Securities Co.
New York, NY

March 29, 1968

CONFIDENTIAL

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

RE: COMMENT ON RELEASE NO. 34-8239

Dear Mr. DuBois:

This firm wishes to submit the following comments on the Commission's proposed Rule 10b-10 and the New York Stock Exchange proposals as set forth in Securities Exchange Act of 1934 Release No. 8239.

We request that these comments be given confidential treatment by the Commission.

New York Securities Co.

New York Securities Co. is an investment banking firm which is a member firm of the New York Stock Exchange and an associate member of the American Stock Exchange. The firm conducts a brokerage business for institutional and a limited number of retail clients. The firm does not engage in the distribution of mutual fund shares. The firm provides in-depth research services for its institutional clientele.

The New York Stock Exchange Proposals

We have studied the proposals of the New York Stock Exchange set forth in Mr. Haack's memorandum of January 2, 1968, and the views of the Exchange on proposed Rule 10b-10 expressed in Mr. Haack's letter to the Commission dated March 21, 1968.

In general, we support the Exchange's proposals and its criticism of the proposed rule. We believe that the interests of all investors will best be served by preserving the depth and integrity of the primary exchange markets through implementation of the Exchange's proposals rather than Rule 10b-10.

We should also like to stress the need for further economic analysis in connection with the adoption of any "volume discount." Any significant reduction in gross commissions would have a serious impact on brokerage profitability in this time of continually increasing costs. It must be realized in all fairness that at this time large-volume transactions are in effect subsidizing many smaller, unprofitable transactions. It would be appropriate therefore to consider increasing brokerage charges for smaller transactions in conjunction with granting volume discounts.

Proposed Rule 10b-10

1. We believe that the Commission has failed to realize the true import of the statement in Mr. Haack's memorandum that "There is more to an order than its execution." The "give-up" procedure should be viewed in light of the total securities transaction -- the search among industries and companies for investment opportunities; research on an in-depth basis into the most promising opportunities; selection based on the investor's objectives and ability to undertake risk; technical market analysis for the purpose of correctly timing the transaction; execution in the most advantageous manner; clearance of the transaction; and continual reappraisal of the investment thereafter.

The astute investment company manager will realize that various firms have areas of expertise in the above activities. In particular, some firms are known for their research abilities; others for their abilities in execution on the floor. The investment company manager should be encouraged to utilize the best abilities of more than one firm in a transaction. The flexibility of "give-up" procedures is necessary in order to compensate all persons who have made a contribution to the transaction.

Requiring the manager to execute transactions through a firm which has provided research services to compensate for those services is undesirable if another firm is better able to handle executions. Also, absent "give-up" procedures, it would be impracticable to directly compensate a firm for doing exhaustive research on an industry or company which resulted in a recommendation that no investment should be made therein.

The Commission has implied that all "give-ups" represent a waste of the investment companies' assets, when in fact a considerable portion of "give-ups" represent legitimate, direct compensation for costly research services rendered. We believe these are compelling reasons that such "give-ups" should continue since (and we believe the Commission agrees) good research is the cornerstone of successful investing, and good research requires significant expenditures.

2. We believe that the investment companies have benefited substantially from the relationships that they have developed with their "prime brokers" (sometimes referred to as "lead brokers"). The prime broker is chosen because of his skill in executions. As prime broker for an investment company, he develops a "feel" for executing large orders according to the desires of and in the best interests of that investment company. With a minimum of instructions, he is able to act quickly in the marketplace, executing large transactions without a disruptive effect on the market.

The prime broker is engaged in a floor brokerage operation at the behest of the investment company, and normally giving up the name of another broker who handles the clearing function. For his participation in the transaction, the prime broker receives the regular floor broker's commission, which is equivalent to the small commission that specialists receive for acting for another broker.

Adoption of the proposed Rule 10b-10 would effectively prevent this "prime broker" relationship and in some areas disrupt the market for a security.

3. We believe that adoption of proposed Rule 10b-10 would ultimately reduce competition in the securities markets by bringing about concentrations of power. These concentrations would result from the relationships which would grow between large investment companies and large brokerage firms.

It is likely that registered investment companies would channel their brokerage business to the firms which are active in the retail distribution of their shares to an even greater extent than presently exists. This brokerage business would be taken away from firms which heretofore had provided research or other services to the investment company, but which were not active in the distribution of its shares.

The "give-up" procedures presently in effect tend to spread investment activities and compensation therefore throughout the brokerage community.

4. We believe that the Commission's plan to extend the proposed rule to fiduciaries and affiliates of funds other than registered investment companies would be wholly undesirable and unnecessary. The Commission, having statutory jurisdiction over the activities of investment company managers, is rightly concerned about their conduct. However, a delineation of proper and improper practices by other fiduciaries should be left to the courts applying applicable local law and internal law (charters, declarations of trust, etc.). Promulgation of any rule purporting to have such a substantive impact on fiduciaries generally would raise serious questions as to whether the legislative intent had been exceeded.

5. We suggest that the Commission redirect its inquiry into the activity of mutual fund managers who direct "give-ups" to broker-dealer affiliates without crediting the full amount of such "give-ups" against the advisory fee charged. In view of the high legal standards of conduct required of fiduciaries generally and the regulatory jurisdiction that the Commission has over fiduciaries of investment companies, this subject demands closer scrutiny.

We are prepared to elaborate upon our views on the above subjects if requested.

Sincerely yours,

NEW YORK SECURITIES CO.

By:

[signature illegible]

Partner