

New York Times
Saturday, August 21, 1971
(Letters to the Editor)

POLICY FOR SECURITIES MARKETS

To the Editor:

Without commenting on other positions taken in your editorial of Aug. 7 on the Martin Report, I believe you did not hit the mark on two important antitrust issues. One relates to Mr. Martin's recommendation of immunity for self-regulatory action and the other to his proposal of a single "national" securities market.

As to the first, I must take exception to your statement that "the antitrust laws do not prevent any desirable form of self-regulation by the exchanges." In the present uncertain state of the law, exchange officials and members faced with a specific regulatory question may well stop to consider whether their action may later subject them to a treble damage suit – in a court that is ordinarily more familiar with antitrust doctrine than with self-regulatory needs of the securities markets. In such an atmosphere, doubts may be resolved in favor of inaction, and timidity rather than vigor may become the prevailing tone of self-regulation.

What is needed, at least, is some re-examination of the balance between regulatory and antitrust approaches, to be sure that the presumption is not in favor of the former. This point was made in the 1963 Report of the Special Study of Securities Markets and I believe it is just as valid today.

I am also concerned at the Martin Report's lack of emphasis on competition, among market makers or markets, on which your editorial did not directly comment.

The recent Institutional Investor Study has confirmed the need for strengthening market-making capacity. The critical question is whether greater concentration or enhanced competition is more likely to produce the result consistent with the public interest. The Martin Report comes out for a structure in which each security would be traded exclusively in a single marketplace, but it does not say where competition would fit in.

The special study comes out on the side of competition: ". . . the public benefits of competitive markets . . . by and large outweigh and detriment . . . The basic policy would still be 'to create a fair field of competition' [quoted from a 1936 Report of the Senate Committee on Banking and Currency] among markets and generally to foster free and open competition rather than to restrict competition."

Competing specialists in the same issue have disappeared from the New York Stock Exchange. But a newer form of competition – competition among market-makers in different markets under separate self-regulatory regimes – has shown viability and vitality.

Unquestionably, it is necessary to move toward a strong communications system to enhance access, data disclosure and competition itself. Unquestionably, collaboration in dealing with common problems should be encouraged. Unquestionably, there is need for further equalization of regulation, so that degradation of standards does not become a competitive weapon. But a trend toward elimination of autonomous market and regulatory centers, which have proven their worth as breeders of innovation and wellsprings of incentive, should not be tolerated.

It is evident that maintaining a “fair field of competition” cannot result from either extreme of routine application of antitrust laws or abnegation of antitrust policies. A complex and sensitive balancing between competition and regulation is involved, and this is perhaps the basic policy area to which attention must now be addressed.

Milton H. Cohen
Chicago, Aug. 12, 1971

The writer, general counsel of the Midwest Stock Exchange, was Director of the Securities and Exchange Commission’s Special Study of Securities Markets in 1961-63.