COMMISSION AMENDMENTS
FOR 1974

EXHIBIT A – Supplementary Memorandum
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THE New York Stock Exchange

Board
Memorandum

THE New York Stock
Exchange

SUMMARY MEMORANDUM

COMMISSION AMENDMENTS FOR MARCH, 1974

THE ISSUE

To determine whether the Board should take the first steps toward complying with SEC conditions for extending recent commission rate increases beyond March 31, 1974.

BACKGROUND

On September 11, 1973 the SEC approved commission rate increases of 10% on orders from $100 to $5,000 and 15% on orders from $5,000 to $300,000, through March 31, 1974. The SEC Release announcing the approval stated that continuation of the increases beyond that date would be conditioned upon action by the Exchange to:

(1) Permit member firms to grant a 10% commission discount to customers who receive less than a full range of brokerage services; and

(2) Permit member firms to charge more than the minimum commission on small orders.

In a December 14 follow-up letter, the SEC commented that the 10% discount proposal might not be workable, and indicated its willingness to accept a "modification" of the proposal or a "realistic alternative to it," in order to provide "a meaningful experimental period" of limited price competition.

DISCUSSION

One important objection to the SEC proposal for a 10% discount is that it would be likely to become automatic in the case of large institutional orders and thus bring about a substantial loss of income to member firms while failing to provide for meaningful experimentation with price competition for an important customer group. This objection could be overcome by limiting the discount to orders below a stated dollar amount.

A first step toward limited price competition is already under consideration by the Board under heading of "Small Investment Programs" (Document 0135) providing for amendment to the Exchange Constitution to remove fixed commissions from orders of $1,000 or less. Guidance of the Board is to be sought at the January meeting as to whether the latitude for experimentation should be further expanded.

The terms of the SEC conditions are spelled out in the attached Supplementary Memorandum (Exhibit A). Also attached as Exhibit B is a proposed Rule amendment to rescind Rule 383.

RECOMMENDATION

The staff recommends that the Board approve in principle amendments to rescind the existing provisions of Rule 383. If approved, the proposed amendments will be submitted to the SEC, pursuant to SEC Rule 17a-8. A draft letter for this purpose is attached as Exhibit C. Assuming no SEC objection, the proposed amendments will be resubmitted to the Board for further action at a later date.

Regulatory Development Department

EXHIBIT A

SUPPLEMENTARY MEMORANDUM

COMMISSION AMENDMENTS FOR 1974

On September 11, 1973, following public hearings, the SEC approved increases in Exchange commission rates of 10% on orders from $100 to $5,000 and 15% on orders from $5,000 to $300,000, through March 31, 1974.

In approving the commission rate increases, the SEC also stated the following three conclusions relating to the future of fixed minimum commissions.

> "(2) [The Commission] will not object to the continuation of such a rate increase from April 1, 1974, through April 30, 1975, if the NYSE should first adopt rules, effective by or before April 1, 1974, which (a) eliminate that portion of NYSE Rule 383 prohibiting member firms from charging their customers commission rates exceeding the NYSE's commission rate schedule, and (b) permit, but do not require, member firms to provide less than a full range of brokerage services presently furnished customers in return for discounts of up to 10 percent from the commission rate schedule referred to in subparagraph (1), above;
>
> (3) It will act promptly to terminate the fixing of commission rates by stock exchanges after April 30, 1975, if the stock exchanges do not adopt rule changes achieving that result; and
>
> (4) It will not initiate in April 1974, a breakpoint reduction below $300,000 respecting the portion of orders above which rates may be competitively determined."

In a December 14 follow-up letter, the SEC commented on the 10% discount proposal as follows:

> "We understand through conversations with representatives of the exchanges and the member firm community that there is some question whether the foregoing proposal represents a workable opportunity for experimentation with limited price competition. We adhere, however, to our objective that the exchanges take steps to effect a meaningful experimental period prior to the introduction of a system of completely unfixed commission rates, even if it should take the form of a modification of our proposal or some other realistic alternative to it. We believe the exchanges and the member firm community should assume the initiative for developing a program fostering limited price competition during this period prior to the introduction of unfixed rates if there is a desire to retain the commission rate increase that was the subject of our September 11th release beyond April 1, 1974, and we request timely initiatives by the exchanges and other interested persons to effect this aspect of the Commission's September 11th conclusions."

PROPOSED MODIFICATION

One important objection to the SEC proposal for a 10% discount is that it would be likely to become automatic in the case of large institutional orders and thus bring about a substantial loss of income to member firms while failing to provide for meaningful experimentation with price competition for an important customer group. This objection could be overcome by limiting the discount to orders below a stated dollar amount.

A Constitutional amendment under separate consideration by the Board would remove fixed minimum commissions from orders of $1,000 or less. This provides an opportunity to experiment with different ways of pricing different groups of services on orders below that size. Some of the possible methods of experimentation are:

1. A "round turn" discount for purchase and sale within specific periods; same day, before settlement etc., before end of accounting month, within 30 days, etc.

2. Pursuant to a package plan for periodic purchases, where funds are paid in advance and orders are bunched (MIP or Bank type plans – extending a discount between $1,000 and $5,000).

3. A different compensation for sales as contrasted to purchases, especially when securities are delivered to the broker before sale.

4. When advance payment is made.

5. In the event that a separate custody charge is made pursuant to the Repeal of 383.

6. In the event that the account also pays a separate investment advisory fee.

7. In the event that a firm's individual circumstances indicate that either "cash and carry" or retention of securities is cheaper.

8. For dividend reinvestment plans.

9. For unsolicited orders when no commission or a lesser commission is paid to registered representatives.

10. For odd lots trailing a round lot, or the round lot trailed by an odd lot.

11. For gifts to minors (to encourage broadening share-ownership).

12. For family transfers – husband to wife, etc. when commissions on an exchange of value are required.

13. On completion of transactions related to an option.

14. On tax swaps.

15. On margin trades on which interest has been paid for a predetermined length of time.

16. On margin call sales.

A second step mandated by the SEC proposal is that Rule 383 be amended to remove the maximum commission requirement for small orders.

In addition to prohibiting member firms from charging commission rates in excess of the minimum commission, Rule 383 prohibits member firms from imposing any limitation on customer service unless that limitation was generally imposed prior to

April 1, 1969. The latter prohibition was one of the conditions of SEC approval of the Exchange's commission rate schedule adopted in March, 1972.

The present Rule 383 has the effect of making minimum commissions on small orders identical with maximum commissions. The SEC's purpose in requiring the Exchange to rescind this provision appears to be to give Exchange members maximum flexibility in deciding what types of customers they wish to serve and in pricing their services accordingly. It would be consistent with this purpose to rescind the entire rule.

EXHIBIT B

RULE 383 – AS PROPOSED TO BE RESCINDED

[No member organization which introduces or carries the accounts of customers who purchase or sell small amounts of stock shall impose any limitation of any kind on the size or frequency of customer orders in such accounts or the size of such accounts, unless such limitation was generally imposed prior to April 1, 1969. With respect to the execution of any small order for the purchase or sale of any security admitted to dealings on the Exchange, no member organization shall impose any fee, commission or other charge on any customer in excess of the commission prescribed in Article XV, Section 2(a) of the Constitution.]

EXHIBIT C

THE New York Stock
Exchange

James E. Buck
Secretary

Mr. Lee Pickard
Division of Market Regulation
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Mr. Pickard:

Pursuant to SEC Rule 17a-8 under the Securities Exchange Act of 1934, we are submitting herewith three copies of proposed amendments to Rule 385. These amendments were approved in principle by our Board of Directors at their meeting on January 3, 1974. We would appreciate receiving your comments as soon as possible.

The proposed amendments are intended as a first step to meet the conditions established by the Commission in its Release 10383 dated September 11, 1973 and later modified by letter dated December 14, 1973 that the Commission "…will not object to the continuation of such a rate increase from April 1, 1974, through April 30, 1975, if the NYSE should first adopt rules, effective by or before April 1, 1974, which (a) eliminate that portion of NYSE Rule 383 prohibiting member firms from charging their customers commission rates exceeding the NYSE's commission rate schedule, and (b) permit, but do not require, member firms to provide less than a full range of brokerage services presently furnished customers in return for discounts of up to 10 percent from the commission rate schedule referred to in subparagraph (1), above."

The proposed amendments would rescind the existing provisions of Rule 383. At the same time, the Board of Directors has taken a separate action to remove fixed minimum commissions from orders amounting to $1,000 or less. This will provide an opportunity to experiment with different ways of pricing different groups of services on orders below that size, and will thus meet the objectives of the Commission's September 11 Release and December 14 letter.

The amendments to Rule 383 eliminate not only the portion of the Rule which prohibits member firms from charging customers commission rates exceeding the Exchange's minimum commission, but also that portion of the Rule which prohibits member organizations from imposing any limitation on customer service unless that limitation was generally imposed prior to April 1, 1969. We understand that the purpose of requiring the Exchange to rescind the portion of Rule 383 which has the effect of making the minimum commissions also maximum commissions for small orders is to give Exchange members maximum flexibility in deciding what types of customers they wish to serve, and in pricing their securities brokerage services. It is consistent with this purpose to rescind all of Rule 383.

Any questions on this matter should be directed to Mr. David D. Huntoon at (212) 623-5253.

Very truly yours,

James E. Buck

Enc.
cc: Mr. Harvey A. Rowen
Subcommittee on Commerce
and Finance