

THE New York Stock
Exchange

SECURITIES AND EXCHANGE COMMISSION
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 DIVISION OF MARKET REGULATION

James E. Buck
 Secretary

November 5, 1975

Mr. Lee A. Pickard, Director
 Division of Market Regulation
 Securities & Exchange Commission
 500 North Capitol Street
 Washington, D. C. 20549

Dear Mr. Pickard:

This letter is to notify the Commission of the position of the New York Stock Exchange as it relates to the Floor trading activities of newly-approved members under Section 11(a)(1) of the Securities Exchange Act of 1934, (the Act).

Our remarks are here directed to those Floor trading activities regulated by NYSE Rules 110, 111 and 112, specifically, trading by Registered Traders. Throughout recent decades, the trading of Floor members for their own account has made an important contribution to the liquidity of our market and has exercised a stabilizing effect thereon. Indeed, the ability of members to enter the market, even in the absence of public orders, has promoted the efficiency of the auction process.

In 1964, following extensive discussion with the SEC, the Exchange adopted Rules 110, 111 and 112. They were submitted to the Commission and subsequently approved by the Commission pursuant to SEC Rule 11(a)(1)(b)(7). During the past 11 years these rules have operated to support the maintenance of a fair and orderly market. From 1964 through 1974 registered traders' stabilizing transactions have ranged from 84.6% to 89.8%, while in the same period specialist stabilization transactions have ranged from 88.5% to 95.6%. It is clear that registered traders supplement and support market-making functions, contributing to the effectiveness of the specialist system.

A weakening of the trader and the removal of capital from the market would lead to a less liquid market than now exists. This would work to the disadvantage of the public investor. Registered traders often enter the market at points and prices and on the side of the market where there may be a momentary lack of public interest. It has been found that Floor officials of the Exchange, on occasion, ask registered traders to consider entering problem trading situations to help supplement the specialists' efforts in maintaining price continuity or stability. There are times when this occurs without suggestions from Floor officials, for example, in participation at the opening or re-opening of a stock and even in the handling of large blocks. They submit voluntarily to the Exchange's extensive code of Rules that govern the conduct and operations of all members. The net effect of their buying and selling is to add to the liquidity and thus to the quality of the marketplace.

It is the Exchange's position on this issue that the newly-enacted amendments to the Securities Exchange Act of 1934 do not in any way change the authority of the SEC to approve the functioning of Exchange members who choose to act as registered traders on the Floor. In taking this position, the Exchange is supported by the provisions of Section 11(a)(1)(E) and (H).

The clear language of Section 11(a)(1)(E) of the Act exempts from the blanket prohibitions of the so-called 100/0 test transactions for the account of a natural person. The Conference Committee Report and the 1975 Act itself shows, in our opinion, that the drafters were not directing their limitations at individual Exchange members, but rather were attempting to affect institutional and "upstairs" trading. In addition, the plain language of Section 3(a)(3)(A)(i) under the Act makes it clear that the status of membership in no way changes the status of a natural person. That section reads, in part, as follows:

"The term 'member' when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker..."

Nowhere in the debate upon the 1975 Securities Acts Amendments or the legislative history thereof is there any suggestion that an individual forfeits his status as a "natural person" upon election to Exchange membership, nor could such a suggestion have been reasonably advanced.

With respect to the question of whether a post-May 1st member organization may function as a registered trader, in the same way and subject to the same regulations as those members benefitting from the provisions of Section 11(a)(3), the Exchange is of the view that NYSE Rules 110, 111 and 112, adopted pursuant to SEC Rule 11(a)(1)(b)(7) satisfy the requirements of Section 11(a)(1)(H). These rules were adopted after extensive discussion with the Commission and were deemed to provide a guarantee of public preference in the trading of shares on this Exchange. In approving these rules, the SEC agreed with the establishment of new responsibilities for registered traders, enabling them to enhance their constructive contributions to the auction market. From their adoption in 1964 to the present the Commission has had authority to suggest changes in these rules, but has not done so. We believe that those rules presently in force assure compliance with Section 11(a)(1)(H) in providing for public precedence and parity, the protection of investors and the maintenance of fair and orderly markets.

The Exchange believes that its position on this issue will materially aid in preventing a situation to develop whereby prospective members who wish to compete with existing members on the Floor will be precluded from doing so. Such a situation would have a harmful effect upon the Exchange market and would appear to conflict with the letter and spirit of the 1975 Securities Acts Amendments.

Accordingly, the Exchange intends to continue to approve both individuals and firms intending to perform a registered trader's business pending the adoption of any rules relating to registered traders by the Commission.

In taking this position, the Exchange is not asking that the door be closed on further discussion of registered traders. We firmly believe, however that present Exchange regulations assure adequate public protection.

Very truly yours,



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Subj. Files 34-81

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