

*U.S. house of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn house Office Building
Washington, DC 20515*

December 20, 1989

The Honorable Richard C. Breeden
Chairman
Securities and Exchange Commission
450 Fifth Street, N. W.
Washington, D. C. 20549

RE: Release No. 34-26708; File No. S7-13-89
34-27227; File No. 600-24

Dear Chairman Breeden:

At a public meeting on January 5, 1989, the Commission violated its statutory mandate by voting to permit RMJ Securities Corp., Security Pacific Corp., and Delta Government Options Corp. to operate an exchange for trading options on U.S. Treasury securities without registering as a national securities exchange as required by the Securities Exchange Act.

I am writing to urge in the strongest possible terms that this unlawful act not be repeated. The exchange concept is fundamental to the Securities Exchange Act. In that Act, Congress has defined "exchange" in section 3(a)(1) and has centered substantial regulatory protections around the existence of exchanges "to insure the maintenance of fair and honest markets" for the protection of investors. This was reaffirmed in the Securities Act Amendments of 1975.

First, the Commission voted to approve Delta's application for registration as a clearing agency for 36 months and exempted Delta from Section 17A(b)(3)(C) of the Exchange Act. The Commission also voted to concur in a staff recommendation that a no-action letter be issued to RMJ allowing it to operate without registration as an exchange. In addition, the Commission voted to issue a release proposing a rule (Rule 15c2-10) governing the operation of "proprietary trading systems that are not operated as facilities of national securities exchanges or associations" and requesting comment on various alternatives to the proposed rule. The proposing release was not issued until April 1989 and, to date, neither Rule 15c2-10 nor any other rules have been put in place. Therefore, RMJ/Sec Pac/Delta are currently operating without benefit of either the self-regulatory duties envisioned under the proposed rule or the statutory requirements imposed on regulated exchanges.

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On August 17, 1989, the United States Court of Appeals for the Seventh Circuit vacated the Commission's order granting Delta's clearing agency registration application. The Court of Appeals held that "[b]efore concluding that Delta's proposed operations could 'comply' with the '34 Act, the Commission had to determine that the System is not an exchange. It didn't make this decision." The Court therefore remanded to the SEC "to decide whether the System is an 'exchange' and to re-register Delta or decline to do so."

In CBOT v. SEC, the Court admonished:

When Congress establishes the rules, an agency must carry them out. A desire to keep the law "up to date" does not justify departure from its rules. E.g., Board of Governors v. Dimension Financial Corp., 474 U.S. 361 (1986); American Bankers Ass'n v. SEC, 804 F. 2d 739 (D.C. Cir. 1986). Administrative power depends on delegation, and delegation comes from Congress rather than a desire, however keen, to innovate.

Slip at 19.

As I stated in my letter to the Commission of November 7, 1985, the System is an "exchange" as defined by Section 3(a)(1) of the Securities Exchange Act of 1934, and, therefore, operation of the System would violate Section 5 thereof, which prohibits any broker or dealer from using its facilities unless the system were registered as a national securities exchange or an exemption were available. Neither the statute nor the legislative history provides support for any "innovative" exemption; the only exemption lies in Section 5 "by reason of the limited volume of transactions effected on such exchange." The Commission would be well advised to consider recommending corrective legislation to the Congress rather than unlawfully dismantling its statutory mandate.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

cc: The Honorable Edward J. Markey, Chairman
Subcommittee on Telecommunications and Finance

The Honorable Norman F. Lent, Ranking Minority Member
Committee on Energy and Commerce

The Honorable Matthew J. Rinaldo, Ranking Minority Member
Subcommittee on Telecommunications and Finance