

March 11, 1959

Mr. Lee Monett
National Association of Securities
Dealers, Inc.
25 Broad Street
New York 4, New York

Dear Lee:

I am sure by now you have read the latest version of Rule 17a-8 which the Commission released on March 6, 1959. We have reviewed this and are of the opinion that the new proposal contains substantial improvements as suggested by the industry. How far the Association wants to endorse the new proposal, if at all, is another question.

The Commission has not seen fit to meet head-on the question of the effect of the Rule in general on international affairs or finances. However, some of the changes obviously take this broader factor into account. Incidentally, we have learned informally that the Department of State and the Department of Commerce were opposed to the Rule, at least as it was written.

For example, in the Commission's first proposal the report would have required the name and address of the person for whose account the transaction was effected and in some instances the name and address of the person from whom the securities were purchased. In the new version all that would be revealed, at least in the first instance, would be the name of the security, total number of shares and the capacities of the parties.

Of course, upon the receipt of this information it would seem there is nothing to prevent the SEC from obtaining informally or by use of legal procedures the very information that originally was requested in the first proposed Rule. However, the change does show an awareness of the good will problems called to the Commission's attention.

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On the objection raised by the industry of the burden of furnishing reports three days after an order or transaction, the revision requires a report only once a month showing the total amount of foreign transactions in each security in that month. Further, in determining the securities involved the Commission has set up six categories of securities where reports would not be required. This change would not only make the work of the reporting broker/dealers less burdensome, but would limit the transactions in which the Commission is interested. In defining "foreign transaction" the Commission now eliminates the sometimes odious term "non-resident" and substitutes the phrase "not subject to the jurisdiction of the United States."

We have some difficulty with the second part of this definition which says, "any transaction in which the member broker or dealer knows or has reason to know that the transaction is being effected by, through or for any person who resides in or has his or its principal place of business in any place not subject to the jurisdiction of the United States." Proving knowledge or reasonable grounds to have certain knowledge is a subjective test at best. The above definition was probably designed to do away with the industry objection that there was no way to uncover the activities engaged in through nominees or agents. We do not believe this definition answers the original objection.

For example, if a member sells to a bank securities which have been the subject of public discussion relating to a proxy fight, how much effort must the member expend to seek out the true purchaser or if it has reasonable doubts as to the true purchaser should it execute the transaction at all or must it communicate its reasonable doubts to the SEC? The trouble with this definition is that when you create an indefinite obligation, quite often the Commission is the last arbiter of whether this obligation is fulfilled.

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The above are some of our initial thoughts in the matter and it is suggested that you refer the latest proposed Rule to the members of your Committee for their comments and reactions. You realize that comments are called for by April 15, 1959, although, of course, some member of the industry may request an extension of time. After hearing from you, we will write the SEC.

Very truly yours,

Wallace H. Fulton
Executive Director

MAW/mrc