

File

NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK 5, N. Y.

G. KEITH FUNSTON
PRESIDENT

April 14, 1959

The Honorable Edward N. Gadsby
Chairman
Securities and Exchange Commission
Washington 25, D. C.

Dear Chairman Gadsby:

Subject: Proposed Rule 17a-8 under the Securities
Exchange Act of 1934

We have studied carefully proposed Rule 17a-8 in its revised form as set forth in S.E.C. Release No. 5900 dated March 6, 1959.

Apparently the proposal to adopt Rule 17a-8 stems from some evidence that certain securities have been distributed in violation of the Federal Securities Laws by or through persons not within the territorial limits of the United States. In our letter of November 26, 1958, concerning the rule as originally proposed, we pointed to the conclusion on Page 23 of the S.E.C. staff report that this problem "does not appear to be of major importance when considered in the context of the total financing occurring in the United States or even when compared against the volume of securities transactions between the United States and foreign countries . . .". We made the following basic points in opposition to the proposed rule:

- (1) It could easily be avoided by foreign investors.
- (2) It might seriously damage our relations with legitimate foreign investors and drive their transactions out of our domestic securities markets.

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(3) It would be so burdensome on registered broker-dealers as to make compliance difficult if not virtually impossible.

Our first two objections (ease of evasion and potential damage to foreign relations and domestic markets) apply with equal force to the proposed rule in its revised form. The third objection (burden on broker-dealers) still applies, although the modification of the proposal would relieve the situation to some degree.

Ease of Evasion

A foreign investor can easily mask his transactions by placing them through banks and individuals, in this country or abroad, not covered by the rule and not within the jurisdiction of the Securities and Exchange Commission. The rule would not, therefore, pose the slightest difficulty for the occasional illegitimate operator who had something to hide. It could in fact increase the S.E.C.'s enforcement difficulties by alerting foreigners to place their buy and sell orders in such a way as to make detection impossible or at least more difficult. The result would be that both the securities industry and your staff would be put to the considerable difficulty and expense of compiling and analyzing information which would have no enforcement value whatsoever.

Damage to Foreign Relations and Domestic Securities Markets

The vast majority of foreign investors buy and sell securities for perfectly legitimate reasons and would inevitably resent any implication that their transactions are in some way improper. Many of these investors would undoubtedly transfer their accounts to domestic banks or other channels not subject to the reporting requirement, or divert their securities transactions to markets outside the United States. There is also the possibility that foreign countries might adopt retaliatory measures making United States investments in foreign markets

more difficult at a time when our over-all policy is to encourage such investments. Thus the proposed rule could have a serious and far-reaching impact on the good will of legitimate foreign investors and would in all likelihood undermine the role of our New York markets as an international securities marketplace.

Burden on Broker-Dealers

The proposal as modified would still be extremely burdensome on registered broker-dealers. Approximately 300,000 foreign transactions involving forty million shares valued at two billion dollars are handled on the New York Stock Exchange each year. Rule 17a-8 would require broker-dealers to account for these and other foreign transactions -- in all securities -- on a monthly basis. This would mean, in many cases, the addition of new employees and a heavy clerical burden at a time when most broker-dealers already find their facilities taxed to capacity. We feel that the addition of such a heavy burden would be unjustified unless some obvious useful purpose would be served.

Conclusion

Measures designed to control the problem of evasion of the Securities Laws by foreigners can never be effective unless they apply to all foreign transactions, whether they flow through brokers, banks, individuals or other channels. The Securities and Exchange Commission cannot by itself deal with such a broad problem because its domestic jurisdiction is limited to those in the securities industry. Even if this were not so, there is a serious question whether any such program should be undertaken in view of its far-reaching implications from the standpoint of foreign trade and foreign relations.

In view of these considerations, and of the fact that the rule would place a heavy burden on broker-dealers to no apparent avail, we again urge the Commission not to adopt the proposed Rule 17a-8.

Sincerely yours,

