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Manuel F. Cohen, Commissioner
Securities and Exchange Commission
Washington 25, D. C.

Dear Manny:

I have been over the drafts of the suggested legislation you sent me. Before attempting to comment in any detail upon them, I do wish to raise some questions that I feel are of real substance.

1. Let me take up first the suggested amendments of Section 15A of the Exchange Act. I think I fully realize what has led the Commission to try and expand the concept of self-regulation, inasmuch as I sought to do the same thing when I initiated the Maloney Act after the Investment Bankers Code under the NRA had been knocked out. I think on the whole the NASD has been of considerable help, despite certain deficiencies in its administration. But my worry over the suggested expansion goes to the question as to whether the Commission should require, of every broker and dealer, membership in some Maloney Act association. You can think of this question in two ways.

A. The first is the expansion of the NASD to include all brokers and dealers. My experience has led me to be quite wary of this. Although some 70% of the members of our associated mutual fund contractual plan sponsors are members of the NASD, we found that our particular interests were not being sponsored and protected by the NASD and as a consequence we brought the Association into existence. It was only after we had been in existence for some few years, and demonstrated that we had a vitality, that one member of our association was finally, upon my special plea, made a member of the Investment Company Committee of the NASD, which I believe has some 15 to 20 members.

Or to take another problem, the struggle, as you may recall, for a revision of the Statement of Policy, which originally bore down heavily upon the legitimate contractual plan sponsors and in whose formulation none of our members had been consulted by the NASD, was really sparked and carried on by our Association.

To take another phase of the problem, a sponsor company for which I am counsel, Trusteed Funds of Boston, joined the NASD some five or six years ago, but after about two years of membership found that the value of joining this association was so slight, in the light of the fairly heavy dues that they had to pay, that they withdrew. As I see it today, apart from the minority who sell through dealers being required to join the NASD, we gain nothing by joining the NASD, for we are such a small segment of the entire security industry that not only do we get swallowed up by the concern of the NASD for the industry as a whole and by the concern of the traditional mutual funds for their own interests, as to which we represent only a rather small percentage.

B. The second way in which you can look at this problem is by envisaging a series of associations, whose interests are different, becoming qualified under the Maloney Act. This is a problem that we have considered at some length. Here again you run into the difficulty that derives from the fact that these differing activities are not segregated in the majority of security firms. That means that you have at least a double dues problem which is a problem of consequence to the smaller firms, particularly since, with the assumption of the additional duties required by the Maloney Act, as amended, the budget of an association such as ours would have to be enormously increased. It might also mean something of a multiplicity of regulation, which is certainly not desirable as an end in itself.

I have also thought in terms of an association, like the Investment Company Institute, registering under the Maloney Act and embracing all of the investment companies and their activities. This might make sense if such an association could iron out the difficulties and the different points of view that exist between the traditional investment companies and the contractual plan sponsors. I think that this possibly could be done, but there would still remain the difficulty referred to above of diverting from the dues the NASD presently collects as a consequence of the investment

company activities of their present members, so as to provide funds for an adequate budget for this new association.

I wish I had a clear answer to this problem but I certainly think that it should be thoroughly discussed before any definitive action on the part of the Commission should be taken. Maybe the Commission has thought through these problems and can come up with the answers. I do not think that the insertion of the new paragraph 5 of Subsection (b) of Section 15A is an answer to the problems I pose. It simply recognizes their existence.

Of course, the same problems in a sense must come up with dealers in such securities as oil royalties where I presume the great majority are not members of the NASD. But I have no first-hand knowledge of this problem.

C. A minor problem that I have running through these amendments to Section 15A is the limitation of the power of suspension to 12 months. I imagine this limitation was thought out, but why not extend it to three or five years for that matter. I would personally give the Commission all the flexibility that I could in order not to force it too easily to the penalty of revocation.

2. With respect to the sections dealing with the registration of over-the-counter securities. I would make the following general observations:

A. Unlisted Trading. In 1934, we were very opposed to unlisted trading inasmuch as no data on unlisted securities were generally available and thus intelligent trading in them was impossible. The practice was to "list" on the New York Curb Exchange simply at the request of a broker who would make a "market" in them, for the over-the-counter markets were not then generally used for these purposes save with respect to bank and insurance stocks. The controversy as to whether they should all be delisted continued for a few years, ending in a compromise solution that gave grandfather rights to unlisted securities that had been traded prior to March 1, 1934, and permitted the granting of unlisted trading privileges to exchanges on certain conditions if the security itself was listed on another national securities exchange. Partly because of this

limitation as well as other causes, the jiggling that theretofore went on with respect to unlisted securities moved in the next three decades to the over-the-counter markets, where securities could be traded freely without the necessity of supplying the required information demanded of exchange securities.

Because of the ease of controlling regulation in trading on the exchanges, as distinguished from the multitudinous over-the-counter markets, which for example can never supply something equivalent to the ticker tape, it seems preferable that securities, as to which there is information available comparable to securities registered on the exchanges, should be traded on exchanges, regardless of the desires of the issuer. It does seem to me that the old prejudice against unlisted trading, whose base would be removed by these amendments, ought not to remain, but that on application securities now effectively registered on the over-the-counter markets could be bought on the exchanges for trading.

Frankly, I feel quite deeply on this point because I think that a conclusion not to extend unlisted trading privileges stems from factors that by these amendments would no longer exist for they would remove the basis of the historic prejudice to unlisted trading. The enormous mushrooming of the over-the-counter markets is a matter of such concern because it means a weakening of controls. I think, for example, it is literally impossible for the SEC to exercise control over the pink sheets no matter what penalties it may be given. The only danger that I see in my suggestion is that it might force some of the smaller over-the-counter dealers, since all the larger ones are already members of exchanges, to become members of an exchange. But I would downgrade that argument since there are other exchanges than the Big Board where membership can be bought at a reasonable price.

This devise would also I believe cover the problem of margin requirements as affecting those groups of over-the-counter securities that are admitted to unlisted trading. I see no reason why the margin regulations should not extend to this group of securities. As a practical matter, it would be difficult for the brokers and banks to be held to applying margin requirements with

respect to all the securities that would be registered under these amended sections since I doubt whether anyone other than the SEC would have such a list. On the other hand, when securities are registered on an exchange the practical problem disappears.

I know nothing about the costs placed upon the issuer by admitting his stock with unlisted trading privileges, but this is a problem that the old New York Curb Exchange dealt with and probably satisfactorily, so I do not conceive of it as a real problem.

B. I disagree thoroughly with the provision vesting control over the registration of bank securities in some other agency than the SEC. Politically, this may have to be done but it makes no sense any more than that of having insurance securities in the hands of the various state insurance commissions, etc. What assurance would the SEC have under legislation of this type that the Comptroller or the Federal Reserve Board or any other agency would issue the same types of rules and regulations as the SEC?

C. While you are amending the proxy regulations, why don't you provide specifically for the power in the Commission to enjoin a corporate meeting at which proxies were wrongfully solicited or at which under your new Section 14(c) no proxies were solicited?

D. I think your revised proposed Section 9(a)(6), however ideal, is unrealistic. I do not think I need to elaborate upon that comment. Rule 10(b)(5) has thrown the fear of God into activities of this nature where they border on the crass side. The section on the other hand goes so far as not to permit me as an officer to state the net profits of a company as determined by certified public accountants without referring them to the footnotes which are attached to the accountants' balance sheet.

I will set forth my detailed comments in a memorandum since I have made this letter unduly long, and since I only received the new revisions from Justice this morning.

Sincerely yours,

James M. Landis

JML/cah