

One Chase Manhattan Plaza
New York, N.Y.

Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

January 30, 1968

Proposed Rule 10b-10

Dear Sir:

While I am not prepared to comment upon the the proposals made by the New York Stock Exchange or of the Commission's proposal as to details, I have three general observations:

1. The general objective should be not merely to make the commission structure of national securities exchanges neat and direct; it should be primarily an effort to pass the "unearned" portion of the commissions on to the institutional customer so that its costs will be lower and its earnings higher. In doing the latter, the Commission should give serious consideration to making an attempt to eliminate entirely the use of "give-ups" to increase the commissions being paid for the sale of mutual fund shares. The effect of prohibiting such "give-ups" would be to reduce the widespread "high pressure" or "hard sale" solicitation by mutual fund salesman who have a tendency to disregard the best interests of the prospect because of the high commission levels. Mutual funds should, for the best

interests of investors, be handled much like any other security -- by dealers who can choose it to recommend as appropriate for the particular investor.

2. The stated assumption for Proposed Rule 10b-6 in Exchange Act Release No. 34-8239 is that the mutual fund manager has a fiduciary duty to recapture commissions for the benefit of the fund. This reasoning falls flat, since the fiduciary duty also requires the manager to act to protect the fund against higher administrative cost per dollar of investment resulting from insufficient capital invested and from the added costs of sales of portfolio securities to handle redemptions in excess of share purchases. Such higher costs will occur if sales of fund shares do not continue at substantially high levels. Thus, the manager must for the protection of investors also promote the sales of fund shares by matching the competition's incentives. These will include "give-ups" to compensate the salesmen as long as such practices are allowed.

3. Viewing my comments in paragraph 1 against those in paragraph 2 it should be obvious that prohibition of the give-ups being necessary to meet the desired objectives, as indicated in paragraph 2, the effect will be to reduce fund share sales to the detriment of present investors in such funds. The investor would gain in the long run but in the short run a merger movement and a significant readjustment could be expected among the funds as they experience the anticipated reduction in sales. Since Proposed Rule 10b-10 would not realistically reduce the give-up practice substantially a more comprehensive program is needed. It would appear that the Stock Exchange proposal is more realistic, but does not provide sufficient impetus to require the investment funds to pass the savings to the investor.

Very truly yours,

Marshall A. Lewis