

Bache & Co., Incorporated  
New York, New York

February 21, 1968

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

Re: Securities Exchange Act of 1934 Release No. 8239

Dear Sir:

The suggestion in Rule 10b-10 is a poorly conceived approach and would lay the groundwork for the destruction of the basic commission laws of the industry. It would cause indiscriminate favoritism and work to the detriment of the small institutional client and the small and scattered broker dealers around the country. Why does the SEC discriminate against this general clientele of brokers by applying 10b-10 to Funds or Institutions and not to the public?

Any rules suggested to apply to the New York and the American Stock Exchanges must apply to all regional exchanges and would probably result in their destruction.

Reciprocal business is an accepted fact of American political and business life. The student in school learns about reciprocal trade treaties. Reciprocal business in the security industry is not restricted to mutual funds but has a broad inter-relationship between security firms and banks, insurance companies and other types of institutional investors.

Clients have the privilege and right to distribute their orders as they deem best. If they are prohibited from using the system of give-ups as now customary, they must naturally actually divide the execution and/or clearance of their orders amongst various brokers in order to accomplish the SEC ambitions. This would largely reduce the benefits to such clients of volume discount and result in higher costs to brokers handling the business.

Again, we consider 10b-10 a very inadequate and harmful proposal to all concerned.

The question of a volume discount has certain reasons for existing; but its definition as to timing, size of minimum order, scale and ranges, executions at one or various prices, etc., makes the proper scale difficult to determine.

The SEC in order to arrive at a fair program should analyze the cost of handling transactions and consider the risks involved, the amount of capital required, etc., for large and small dealings. Unfortunately, if this were done and a true evaluation arrived at, the small investor would be so penalized he could hardly afford to do business. Therefore, there has to be a balance established so that the industry broker dealers can remain in business and in sound financial status.

I have proposed a commission program, which I refer to as an "execution and clearance commission", which would give an established reduction from the basic commission for clients who arrange for payment against delivery of securities purchased for their accounts, or delivery of securities against payment for securities sold for their accounts. This would apply to an odd lot up to the largest volume order. In my opinion, my proposal could serve as a bridge between the proposed Rule 10b-10 and the Stock Exchange Commission Rate Structure proposal dated January 2, 1968, although of course this would require some intensive study and coordination by all groups involved.

Some of my previously prepared memorandums on my proposal are attached for the study of the necessary executives of the Commission.

Sincerely,

Harold L. Bache  
Chairman of the Board

#### PROPOSED NEW YORK STOCK EXCHANGE COMMISSION PROGRAM

The securities industry constitutes a vital segment of the total American economy. In order to provide a liquid marketplace for the securities of the industry of this country, and to be able to furnish capital for the needs of an expanding economy, it is absolutely essential that the securities dealers of this country remain financially sound and competitive.

Government agencies, in their zeal to correct what they consider to be abuses in the industry, may indeed destroy the financial viability of the securities community and thereby do more harm than good in the overall picture. There is ample evidence to indicate that the smaller New York Stock Exchange member firms, as well as the out-of-town member firms, have found it difficult, if not impossible, to operate at a minimum level of profitability even under the recent increased average volume.

The commission structure of the New York Stock Exchange was revised upward in 1958 and then only to a very modest degree. During the past eight years, the American economy has forged ahead to new record levels, aided by a 2% to 3% inflation per annum. During these eight years, the costs of doing business for any industry, but particularly that of the securities business, where labor is such an important factor, have risen inexorably. Unlike other industries, because of its competitive nature, the securities dealers have been unable to pass on additional costs to the public. At the same time, with the increasing sophistication of the investing public, the securities industry has been compelled to provide an ever-enlarging complex of services at no cost to the client and with no compensating increases in minimum commissions throughout the period. Recent Exchange figures indicate that between 1951 and 1965, the average return on commission house business was a minimal 3.7% after taxes -- a financial condition properly described by some as profit anemia, and a condition which makes it increasingly difficult to accumulate the ever growing capital funds required to finance this expanding business. The recent SEC report, which insists upon and recommends legislation eliminating customer directed give-ups and urges the granting of discounts on block volume business, would further reduce overall revenues to a securities industry already suffering from an acute profit squeeze,

We at Bache & Co. Incorporated believe that the time has come for restructuring the industry's basic commission rates to provide member firms with equitable income on commission business. At the same time, we believe that some relief should be provided to institutional or private clientele who require only the execution of orders, and whose transactions result in the simple delivery or receipt of securities against payment. These customers are not paying the minimum basic commission rate, which must, of necessity, cover highly sophisticated services which they neither need nor use and, in effect, they are subsidizing the free services which brokers render to others. We believe that this commission structure is completely out-dated as a way of doing business and is manifestly unfair to one sector of the investing clientele.

Under the circumstances, we see no alternative to an across-the-board increase in basic commissions, either by raising the rate or establishing a money-involved schedule which would achieve a similar result. This seems to us to be the only way of achieving the level of profitability required for financial stability and continued progress by a large sector of our industry, particularly the many smaller member firms that would be hardest hit by possible changes in the present regulations governing give-ups.

Once a commission structure has been established that would permit medium-sized and smaller firms to operate at an acceptable level of profits, it would then be possible to meet the growing demands for discounts in a logical way. We could establish what might be termed a "non-member executing and clearing

commission." Such a "non-member executing and clearing commission" would apply only when (a) the broker's free facilities for carrying accounts are not used by his client, (b) the transaction in question consists purely of the purchase and delivery of a security against payment, or (c) a security is sold and is delivered in street name against payment. We would urge the Committee on Costs and Revenues to consider the feasibility of establishing the indicated discount to the client at a reasonable and appropriate level.

To insure that no client could have his transaction executed at a rate below the minimum commission due a member firm by any non-member receiving the proposed discount, the non-member would be prohibited from passing the discount on to his client. In practice, all transactions would be billed to customers at the basic commission rate with the discount also shown and, subsequently, settled when the conditions (a), (b), (c) in the above paragraph have been complied with. Furthermore, unless payment is made or securities delivered on the designated due date, the discount would be disallowed. The suggested procedure, it seems to us, would obviate the need for any volume discounts and would be available from the odd lot up.

It may be argued that our industry does not need higher commissions. This may indeed be true for some of the major houses who have been able to take advantage of technological sophisticated machinery for the processing of their business. This is not true for the great majority of the members of the securities industry since, basically, our industry is a conglomeration of small business, averaging less than 150 employees each. The major firms also benefit from the diversity of business which they handle and thereby minimize the effects of radical changes in Stock Exchange volume and operate on relatively narrow profit margins. Again this is not true of the smaller and regional member firms who have already felt the squeeze and would be even more severely penalized should the position proposed by the SEC in the overall commission structure take effect.

While there should be no move made toward subsidizing the inefficient in a free enterprise economy, an effort should be made to keep the competent, smaller broker-dealer in business because he covers many smaller communities and makes a contribution to the industry not possible by a larger firm (market-making for small companies, new issues for new growth companies, etc.).

We are, by and large, a self-regulated industry and overwhelmingly desire to remain so. But to be truly effective, self-regulation, like democracy itself, must operate not merely in favor of the few but for the benefit of the many, and in the best interest of our investor clients, private or institutional. Those interests are best served by an industry which is financially capable of maintaining the highest

standards of quality service which we have set for ourselves, which the investing public has come to expect of us, and to which the public is entitled.

To maintain the standards of service achieved in recent years, and to take the fullest, possible advantage of technological developments for further refinements in the nature and quality of those services, our industry must overcome its "profit anemia" before the ailment becomes chronic and possibly incurable. In any event, long overdue higher basic commissions, with execution and clearance commission discounts, appear to be the only realistic remedy for what ails a large sector of the Exchange community.

The program, outlined above would satisfy the SEC proposal, which insists that those receiving various special services should pay for them. At the same time, those not using such special services would not have to pay for them and would have their business executed below present commissions but with an increased net return to the industry.

Harold L. Bache

PROPOSED NEW YORK STOCK EXCHANGE COMMISSION PROGRAM  
We must bring a constructive program to the SEC.

We must protect the smaller and regional firms.

We must recognize the needs of institutional clientele.

We cannot have service charges. Therefore, instead of making extra charges for various services rendered, we must give discounts to those not using the services.

The main reason for opposing this program is fear of losing something.

Every client, from the odd-lot private individual up to the institution handling blocks, can get the benefit of this program.

Opposing this program obviously means penalizing the institutional clients.

Harold L. Bache  
April 17, 1967

Accepting the Exchange money involved program--

I am concerned with not making institutions or other clients pay for what they don't want.

I therefore suggest a special reduced commission for those who only want their business executed and cleared.

This can apply to an odd lot or to a large block.

Anyone who believes in making the minimum possible charges to clients must agree with this.

It is obviously unfair and really ridiculous to ask institutions and others to subsidize us so that we can offer free services to clients who would have to pay for these services anywhere else. The SEC study emphasized this.

I cannot believe that any of us would want to charge institutions more than the service is worth.

I am trying to present a philosophy, not a schedule.

We cover volume discount by the new money involved exchange program.

An opportunity for broker dealers to benefit is offered by the proposed discount for execution and clear commission.

One possible problem is for banks; and if we recognize the problem, the details of a solution can be found.

The SEC in its report constantly said that those not using facilities should not be charged and that those requiring various costly services such as you all know should have to pay.

Service charges are an annoyance, difficult to install, and definitely out of the question. Discounts are simple to handle, attractive to those receiving them, and clients not using facilities are entitled to them.

Harold L. Bache