Montgomery, Scott & Co.
Philadelphia, Pennsylvania

February 21, 1968

The Honorable Manuel F. Cohen, Chairman
U.S. Securities and Exchange Commission
Washington, D.C.

Re: SEC Release 34-8239 dated Friday, January 26, 1968

Dear Mr. Chairman:

Prior to commenting on the above captioned release, permit me to give the following identification:

1. This firm has never had a mutual fund department, nor employed mutual fund salesmen as such. Purchases and sales of mutual fund shares by our customers constitute a minor part of our business.

2. I have served as a Governor of the New York Stock Exchange (1940-45) and simultaneously as President of the (then) Philadelphia Stock Exchange.

3. Appointed to a NYSE committee to recommend revision of the commission structure (was this in 1952? eheu, fugaces!), I was one of two thereon who sided with President Funston in favor of (a) a volume discount, and (b) a brand new commission schedule based on money involved.

Now may I comment on #8239?

I am pleased that the NYSE board is at last advocating a volume discount, but sorry that "money-involved" has again been thrown overboard; I would hope that, if adopted, the volume discount would apply to a particular order rather than a particular customer, because in the latter case commission refunds toward the end of the year would seriously add to back-office miseries and would confuse P&L computations.

One effect of a volume discount on the subject of your proposed rule 10b-10 is mentioned on page 6 of #8239, as follows:

"The Commission assumes that the discount ultimately arrived at would be meaningful and workable. Upon that assumption it would appear that this part of the Exchange proposal would make an important contribution to resolving the problems discussed above and be in accord with suggestions that the Commission has made to the exchanges on several occasions."

My hope is that the volume discount would make it possible to have Rule 10-b-10 apply only to cases where fund managers cause portions of commissions to be channeled back indirectly to the fund or to organizations controlled by it. If so, should it not be part of the Investment Company Act rather than the Securities Exchange Act?

It seems to me that "customer directed give-ups" are not all birds of one feather. In the above mentioned cases, Rule 10b-10 certainly applies. But in cases where a customer directs a give-up in order to compensate a firm for such services as research, is not the case different?

On page 3 of #8239 occurs this sentence:

"Fund managers also often use give-ups as a reward for research ideas furnished to them in their capacity as investment advisers to the funds."
Surely the shareholders of a fund are entitled to all the best applicable advice and ideas which the fund managers can obtain, and they cannot obtain them gratis.

At the same time, fund shareholders are also entitled to the best possible executions. Let us assume that the managers of Fund X, having made sundry uses of research material from ten different firms, decide to purchase or sell 50,000 shares of a certain stock. Ten 5,000 share orders given to different brokers will in all probability obtain less favorable prices than if the order is handled by a single broker who is willing to distribute directed amounts to the other nine, over and above the clearance or floor commission he is required by NYSE rules to retain.

Whether commissions be higher or lower than at present, I believe that the free functioning of this mechanism should, primarily in the interest of fund shareholders, be carefully preserved.

As to regional exchanges, they should be required to conform to the same requirements as the Big Board in such matters. The NYSE is correct in demanding this, but perennially mistaken in objecting to such things as multiple trading and reciprocal arrangements in dually listed stocks. Will they never learn that in time of trouble the regional exchanges are a political anchor to windward which can be of great value? They should nurse them like cherished children.

What the heck, Mr. Chairman, ever happened to "money involved"?

With best wishes and kind regards,

Very sincerely yours,

Edgar Scott