Newburger & Company
Philadelphia, Pennsylvania

March 28, 1968

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

Attention: Mr. Orval L. DuBois, Secretary

Gentlemen:

I am writing to you on the subject of Release #8239, in accordance with your invitation for interested persons to submit their views and comments. At this time I will confine my comments solely to proposed Rule 10b-10 and will withhold comment on the "package proposal" as submitted by the New York Stock Exchange until more definite information is available. Suffice it to say, however, that I am strongly of the opinion that the proposal should be considered in total, and not fragmented, and, additionally, that no final action should be taken until a thorough study of the economic impact on the investment community has been made and is available for study.

This is being written solely in my capacity as Managing Partner of a regional member firm, and reflects no policy, nor represents any decision of any institution or organization in the investment industry.

Reciprocity is an accepted method of doing business in all phases of current business practice, and no justification is evident for singling out the investment industry as the one exception in the American way of life and economy. Additionally, there is nothing either immoral or unethical in recognizing that reciprocity does exist, and in this instance I feel that there is no question but that the abolition of the practice will prove to be much more disadvantageous to the "general public" and the mutual fund stockholder, than any slight benefit which might accrue.

In this connection, since it seems inevitable that eventually a "volume discount" will be established, the mutual fund shareholder is already protected to this extent, and to further reduce the payment to various brokers involved for service rendered would, in my opinion, weaken the entire investment industry to the great and far-reaching disadvantage of the shareholder.

The service rendered may, of course, have been research, or it may have been for help provided in pricing securities or some similar mechanical or technical service. All such services, of course, cost the broker time, money, and personnel, and since they are for the benefit of Fund shareholders, recompense is surely deserved. Possibly the service rendered to the Fund has been in the distribution of its shares. Here, by bringing more money into the Fund, the broker has done a service for all its stockholders by providing additional capital for investment for the benefit of the shareholders, it supplies funds for further portfolio diversification, and it makes available cash for redemptions, thereby obviating the need for untimely or forced liquidation. In summation, since all services rendered help promote the growth of the Fund for the benefit of all the stockholders, regardless of what form such services take, it is fair, it is logical, and it is economically justifiable that such services deserve remuneration.

Obviously, Mutual Funds could fragment their orders by dividing them among various brokers for execution, but this would not be in the best interest of either the Fund or their shareholders, and accordingly, the "lead broker" concept with "give-ups" being distributed upon instruction, is from all viewpoints infinitely preferable.

While I am sure that certain abuses actually have developed in the "give-up by check" system, it would seem to me that the Commission and the various other regulatory agencies within the industry could and should put themselves in a position to control and to ban any such future practice. It would seem that in this situation an infected finger can be cured without cutting off a whole hand.

There is no question that the abolition of the "give-up" would be of considerable benefit to the larger (mainly New York based) firms, to the detriment of smaller and regional firms throughout the country. It is no secret that adoption of Rule 10b-10 would adversely affect in no small degree the profitability of a number of representative, important, and sound regional firms. The effective percentage is meaningful in a great majority of cases. For my own Firm, for example, during the year 1967 our net profit would have been adversely affected by over 25%, at a minimum.

If fiduciaries other than Mutual Funds, indicated as a possibility via the asterisk footnote on page 9 of #8239, should come under the proposed rule, figures such as I have just cited for our Firm, and others similarly situated, would become even more horrendous and harmful.

Such an economic effect on regional and small firms would unquestionably result in wholesale mergers and liquidations. If, additionally, Mutual Fund commissions are lowered, as proposed in the Bill currently before Congress, with the further

diminution of profits which would result, the economic impact on these firms would, of course, be progressively magnified.

The negotiations of commissions by fiduciaries, which would follow the adoption of Rule 10b-10, would completely abolish the minimum commission concept -- the cornerstone on which the financial community has operated in the public interest and for the public good since its inception. To invalidate this concept would be to weaken and destroy the viability, vigor and soundness of the entire investment and economic community,

It is again no secret that the regional and smaller firms doing a retail business with the "general public," and accepting small orders, execute these on an unprofitable basis. Therefore, regional firms and firms such as ours look to institutional reciprocal business received via the "lead broker" concept and "give-ups" to offset the losses incurred in servicing the "general public" and the small investor in handling the unprofitable orders. Parenthetically I would like to volunteer the opinion that any revised commission schedule should consider rectifying the economic injustice inherent in our current schedule of commissions, whereby the small order and small investor generate a loss on the execution of each order. The current situation is neither justifiable nor sound practice.

If Rule 10b-10 is adopted, with the results I have outlined, there is no question in my mind but that many of the firms I have been discussing will be forced to go out of business, or to be taken over by the larger firms within our industry. A number of recent surveys have shown that in the years to come the brokerage industry must, of necessity, attract additional capital, open new branch offices, train an increasing number of registered representatives, and increase research activity, all to service the expected new business. In addition, regional firms today maintain markets in local securities, underwrite local issues of both the equity and debt type, and are generally extremely helpful to "small business" within their area.

Adoption of Rule 10b-10 will result in the drying-up of the regional firm, a group which has played an important role in the economy of this nation, serving both local industry and the investing public to the great advantage of all concerned. This disappearance of the local investment community, as presently constituted, would be most detrimental to the economic health of the country in general, the regional area in particular, and the investing public.

For all the reasons cited herein, and particularly since I feel that adoption of Rule 10b-10 will be most harmful to an important and constructive segment of the investment industry, that it will seriously dislocate the efficient functioning of the capital and investment markets, and that its advantages to Mutual Fund

stockholders is far outweighed by its disadvantages, I strongly urge reconsideration by the Commission, and the abandonment of the Proposal.

Sincerely yours,

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