Scudder, Stevens & Clark
Boston, Massachusetts

March 29, 1968

Orval L. DuBois, Secretary
Securities and Exchange Commission
500 North Capitol Street N.W.
Washington, D.C. 20549

Dear Mr. DuBois:

We welcome the opportunity to comment on proposed Rule 10b-10 as promulgated in Securities Exchange Act Release Number 8239.

Our firm, which was organized in 1919, is one of the oldest and largest investment counsel firms in the country. Our primary business is rendering impartial investment advice to individual and institutional clients. Among our institutional clients are several registered investment companies. For those clients who so wish, we also arrange, at no additional fee, the execution of securities transactions.

In 1928, our firm sponsored its first mutual fund, sold then as today without sales charge, in order to provide investors with assets too limited to justify the expense of individual management with a means of affording Scudder, Stevens & Clark management for those assets. (Many such investors were descendents of former individual clients of the firm whose portfolios had been fragmented in distribution to the succeeding generation.) Other investment counsel firms followed suit.

When the Congress held hearings on what ultimately became the Investment Company Act of 1940 and the Investment Advisers Act of 1940, our partner, James N. White, testified on this subject. He explained that we did not charge a sales commission and that we absorbed administrative expense—that our compensation, as in the case of a client with a personally supervised portfolio, was a fee based on assets under supervision. The special nature of such funds was subsequently recognized in Section 10-d of the Investment Company Act of 1940. We are now advisers to three "10-d" no-load funds with assets totalling about $330,000,000, one small no-load fund sponsored by an independent organization, and three investment companies (with assets totalling about $140,000,000) which are not currently offering shares to the public.

These comments reflect our experience, not only as investment counsel to registered investment companies, but also to other institutions and to individuals.

In light of the relationship of the New York Stock Exchange proposal to-that of the Commission, we are sending a copy of our comments directly to the Exchange.

The Volume Discount

We wish first to endorse the interest of the Commission and the New York Stock Exchange in achieving a meaningful and workable volume discount from the current minimum commission schedules applicable to transactions executed on the Exchange. We recognize that there are many mechanical problems to be solved, especially the method of measuring the volume without creating artificial timetables or divisions of market places for transactions. We urge that the Commission, under its authority set forth in Section 19(b) of the Securities Exchange Act of 1934, hold hearings devoted to the subject of developing such a commission system.

Proposed Rule 10b-10

The release discussing the proposed rule seems to assume a "common law fiduciary duty" on all investment companies (and to imply that it exists for all institutions investing pools of money) to structure their businesses in such a way as to recapture the maximum portion of brokerage commissions. The problem is too complex and the practice of too long standing for the SEC to come out with a sweeping condemnation of it as a violation of fiduciary duties. We disagree with the attempted imposition of 1,000 years of Anglo-Saxon trust law on a mutual fund through the device of casually assuming it to be true and then using such assumption as justification for a proposed rule. We think that, even if it is theoretically possible for all funds to "recapture" in cash some part of brokerage commissions presently directed to others, the mandatory application of such a procedure would be unwise. The involved and demonstrably costly procedures required for recapture may or may not be in the best interest of the shareholders of a particular fund. Yet, however wisely the Commission may administer the rule to recognize economic realities, the ever-present threat of a derivative suit will drive many fund managers to maximize brokerage savings through artificial restructuring of their businesses in order to qualify for membership on one or more exchange.

In the early years of our firm it held a seat on the Boston Stock Exchange. Investment advisory fees were reduced by commissions. This is along the lines of Rule 10b-10. We abandoned this in the 1920's because of the possible conflict of interest. We felt our determination on investment recommendations should not be influenced by the number or frequency of transactions. We feel the same way today. We doubt that it is in the best interest of shareholders of a fund to adopt a

rule which fosters a temptation on the part of a fund manager to achieve an advisory and management fee of zero through heavy churning of the portfolio. In the competitive market place, the manager of a fund which seeks steady, unspectacular growth through holding good investments over longer periods of time will be in an impossible position.

The assumption that "recapture" is readily available appears questionable. Our counsel has advised us that every regional exchange has an "anti-rebate" rule and that the regional exchanges are studying these provisions now to determine whether they preclude direct or indirect benefits to the ultimate customer through the device of those rules to which the Commission's release refers.

If the recapture route is available and give-ups can be recaptured by a fund manager or its affiliate, we agree that the recaptured commissions should be used for the benefit of the shareholders. However, this assumes that a reduction in expenses is always the best way to promote the overall best interest of the shareholders. The proposed rule may force fund managers away from negotiated prices on block trades and away from the third market because of the difficulty of proving in a subsequent court action that a negotiated price saved the shareholders more than recapture of part of a commission would have.

For many of our individual and institutional clients, we select the brokers who execute transactions. As a result, we have for a long time consciously attempted to use the brokerage on their transactions for their maximum benefit. In this respect, a registered investment company is no different from our other clients. Every transaction is placed where in our judgment it will be most efficiently executed at the best price currently available. Scudder Fund Distributors, Inc. (a member of the N.A.S.D.) arranges many net transactions without commission with dealers as well as many so-called "third market" transactions and block position transactions with N.Y.S.E. members.

Where there are several sources which can provide equal efficiency and price, we place transactions with those brokers who provide pricing assistance, statistical information and research ideas and with brokerage firms who are willing to forward part of their commissions to other brokerage firms we may name. We have always considered the brokerage commissions the property of the broker and assume that the broker thinks of them in that way also. To intimate that they are in any way the property of the fund or the adviser is astonishing. The broker always has complete-discretion as to whether he will "give up" part of his commission on any given trade and we arrange many commission trades on which the broker refuses to give up any part of his commission. We consider give-ups as part of the pattern of the securities trading process, not as a thing apart. By using it, we are able to achieve greater control of executions and, at the same time, recognition of extra help from brokers.

Without the give-up tool, we would be less able to give our clients the maximum service which we offer today.

We have one of the largest research departments in the country. It has about 100 members who devote full time to research. But we would be the first to say that we cannot research every company, every security, every transaction in depth. We have no monopoly on investment ideas. No matter how large our own research department is now or may become, studies and ideas prepared by outside sources are important to our clients. Brokerage houses prepare such reports in the hopes of earning commissions generated on such transactions which they may inspire. Rewarding brokers with commissions generated (or an equivalent amount on some other transaction since use of direct reciprocity is not always possible consistent with the best market and best execution) seems highly appropriate.

The assumption in the release that directing a give-up to such a broker is in some way increasing the fund adviser's compensation fails to recognize the true nature of the transaction which is in fact assuring the broker of the commissions which he hoped to earn on the transactions inspired by the information he has supplied in situations where the fund adviser has determined that the actual execution can be more favorably achieved through someone else.

A no-load fund, more than a load fund, is faced with the problem of at least balancing redemptions with sales. We cannot emphasize too strongly the advantage to existing shareholders of a fund which accrues so that the investment manager is not required to make forced sales to meet redemptions and can take advantage of new investment ideas with incoming new money. Yet, in order to achieve this desirable result for existing shareholders, the flexibility to direct commissions, arising from transactions as to which the executing broker permits direction, to brokers who sell shares must be preserved. Otherwise, no one outside of the investment adviser's own organization, except, perhaps, a broker who in the normal course would receive business because of his ability to offer best price and best execution, will go to the expense of selling shares of a no-load fund. In the past, the Commission has expressed approval for the concept of the no-load fund. It must realize that proposed Rule 10b-10 will severely limit or perhaps effectively eliminate the no-load fund from the competitive arena of mutual fund selling.

We recommend that the Commission reconsider both the implications of the preamble of SEC Release #8239 and the rigid provisions of proposed Rule 10b-10. Prior to adoption of that rule, there should be an examination of the commission rate structure in which the financial community has an opportunity to participate. Any rule which eventuates, and the rationale under which it is adopted, should preserve the possibility of directing part of a commission to bona

fide members of the brokerage community where the broker is willing to accept such direction. It is already incumbent upon the directors of the fund to consider what is in the best interests of the fund and they should continue to have the flexibility to do so.

Finally, we believe that an interpretation of the rules of various exchanges which would permit direction of part of brokerage commissions back for the benefit of the fund results in a de facto rebate for the fund and it is questionable whether such an advantage for a particular class of investors is fair to other investors. The brokerage dollar should remain in the brokerage community in order to support the overall health of that community. Subtraction of dollars from the gross income of the brokerage community is properly the function of a revised commission rate schedule, not of a rigid rule which may foster more dire problems, i.e., sharply increased trading activity, than the supposed evil which it seeks to cure.

Very truly yours,

SCUDDER, STEVENS & CLARK

By: Ronald T. Lyman, Jr.
General Partner

Copies to:

All SEC Commissioners
New York Stock Exchange