

NEW YORK STOCK EXCHANGE
NEW YORK, N.Y.

August 8, 1968

The Honorable Manuel F. Cohen, Chairman
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D. C. 20549

Dear Chairman Cohen:

This letter is in reply to your letter of May 28, 1968 in which you requested pursuant to section 19 (b) of the Securities Exchange Act that the New York Stock Exchange effect interim changes on or before September 15, 1968 in its minimum rates of commission either (a) in accordance with the revised minimum commission rate schedule attached to the letter, or (b) by eliminating minimum rates of commission with respect to orders in excess of \$50,000.

On June 27, 1968, the Board of Governors, of the Exchange approved in principle a volume discount, a step-by-step abolition of customer-directed give-ups and a one-third discount to qualified non-member brokers. On August 7, 1968, the Board further considered these questions and now proposes a specific interim non-member commission schedule embodying a reduced rate for volume orders, specific interim intra-member commission schedules embodying across the board reductions, additional language to the Exchange Constitution which would prohibit customer-directed give-ups of work or money in consideration of listed business and a postponement of consideration of non-member access.

Non-Member Schedule

We have carefully considered both of the interim non-member alternatives. We strongly feel that the best interests of the securities industry and the investing public would be served by the maintenance of minimum rates of commission, and therefore we concentrated on alternative (a) rather than alternative (b).

In considering alternative (a), we were particularly concerned with its impact on the public as we noted that it would raise commissions on odd lots in stocks selling at \$50 and above and on round-lots up to 400 shares at \$52.50 and above, and on round lots of more than 400 shares depending on how much the price exceeded \$52.50.

We recognize that the reason alternative (a) raised commissions on certain trades was that you sought to lessen the disparity between the commission rates on high priced and low priced shares. However, we feel this disparity should be dealt with after more study, and that an interim schedule should not involve any increases in rates of commission.

Another of our considerations was the operational difficulties inherent in alternative (a) because of the continuation of an order over nine additional days after the first qualifying trades and the change to a different method of commission computation at the comparatively low breakpoint of 400 shares. Orders above the breakpoint would require special handling not required for orders at or below that point.

We understood that the ten day order was designed to relieve customers and fiduciaries of any conflict in deciding whether to complete an order in one day to minimize the commission charge, or whether to spread it out over more than one day to get better execution prices. However, our research into this question has shown us that in very few instances would the savings in commissions by executing an order in one day offset the disadvantages of a loss in execution prices of as little as 1/8, the minimum variation on stocks selling above one dollar. We are convinced that price of execution would continue to be the primary consideration in decisions of whether to complete an order in one day.

The operational difficulties involved in your proposed schedule could be reduced to an acceptable minimum by advancing the breakpoint from 400 to 1,000 shares and by limiting the duration of an order, for purposes of calculating a reduced rate of commission, to a single day.

As an alternate to the first of your proposed interim schedules, we propose, for your consideration:

- 1) An order is defined as all executions pursuant to a single order for one customer account in one security on one side of the market on one day.
- 2) On an order up to and including 1,000 shares, no change from the present schedule.
- 3) On that portion of an order above 1,000 shares, the following rates for each round lot:

Price of Stock: \$1 - \$28
Commission: 0.5% + \$4

Price of Stock: \$28 1/8 - \$30

Commission: Same as for \$28/share

Price of Stock: \$30 1/8 - \$89 7/8

Commission: 0.5% + \$3

Price of Stock: \$90 and above

Commission: 0.1% + \$39

Minimum: \$6

Maximum: \$75

4) When, on the application of the schedule in paragraphs 2 and 3, the commission would be in excess of \$100,000, paragraphs 2 and 3 shall not apply and the minimum commission to be charged shall be \$100,000.

As part of our effort to arrive at an appropriate interim schedule, we surveyed our member firms in detail on their orders of over 1,000 shares on March 13 and March 14, 1968. Based on the responses of 306 member firms doing an estimated 93% of all public securities business done on national securities exchanges, the interim schedule proposed above would have resulted in an annual reduction in security commission income of about \$150 million, or about 7%.

The implementation of this schedule would involve new order handling procedures on the part of member firms, and re-programming of computers for those which use data processing equipment to compute commissions. The most time consuming of these would be re-programming, which is estimated to take at least three months. The effective date of the proposed schedule, therefore, would be at least three months after the amendment of the Exchange Constitution.

Intra-Member Rates

In your letter of May 28, 1968, you also asked that intra-member rates be reduced. We feel it would be reasonable as an interim measure to reduce intra-member rates by a percentage similar to the reduction in nonmember commission incomes.

It would be possible to reduce intra-member rates for orders over 1,000 shares, as in our proposed interim nonmember schedule. However, this would limit the effect of the reduction in intra-member rates to a relatively small number of members and member firms. Many member firms both in New York City and across the nation have their trades executed, and sometimes cleared as well, by

other members or member firms, and our survey indicates that most of this business is in orders at or under 1,000 shares.

We feel it would be in the best interest of all Exchange member firms to make the lower intra-member rates applicable to all round lot orders. Accordingly, we propose that the reduction in intra-member rates be applied across the board by lowering the rates per share (rounded to the nearest five cents for ease of calculation) in each price bracket by 7% as follows:

Price Per Share: Above \$1 but under \$2
Rate Per 100 Shares -- Floor Brokerage: \$1.15
Rate Per 100 Shares -- Clearance: \$1.85

Price Per Share: Above \$2 but under \$5
Rate Per 100 Shares -- Floor Brokerage: \$1.30
Rate Per 100 Shares -- Clearance: \$2.10

Price Per Share: Above \$5 but under \$10
Rate Per 100 Shares -- Floor Brokerage: \$1.95
Rate Per 100 Shares -- Clearance: \$3.25

Price Per Share: Above \$10 but under \$20
Rate Per 100 Shares -- Floor Brokerage: \$2.90
Rate Per 100 Shares -- Clearance: \$5.75

Price Per Share: Above \$20 but under \$40
Rate Per 100 Shares -- Floor Brokerage: \$3.40
Rate Per 100 Shares -- Clearance: \$6.80

Price Per Share: Above \$40 but under \$100
Rate Per 100 Shares -- Floor Brokerage: \$3.60
Rate Per 100 Shares -- Clearance: \$7.15

Price Per Share: Above \$100 but under \$150
Rate Per 100 Shares -- Floor Brokerage: \$4.05
Rate Per 100 Shares -- Clearance: \$8.10

Price Per Share: Above \$150 but under \$200
Rate Per 100 Shares -- Floor Brokerage: \$4.20
Rate Per 100 Shares -- Clearance: \$8.40

Price Per Share: \$200 and over
Rate Per 100 Shares -- Floor Brokerage: \$4.65
Rate Per 100 Shares -- Clearance: \$9.30

Give-Ups

For several years, the Commission has urged the Exchange to prohibit customer-directed give-ups. Your Special Study of the Securities Markets and your Report on Public Policy Implications of Investment Company Growth both found in favor of the industry-wide abolition of customer-directed give-ups. The Commission has urged national securities exchanges to take such action in letters of July 18, 1966 and July 7, 1967. There has been extensive other correspondence from the Commission to this Exchange urging such action. The Commission said most recently in Release #8239 of January 26, 1968, proposing SEC rule 10(b)10: "Approximately 19 months ago, the Commission advised the exchanges of its belief that Exchange rules should be changed to preclude customer-directed give-ups."

The record of the current hearings concerning customer-directed give-ups, and the use made of them lends further support to the Commission's urgings that such give-ups should be prohibited.

In its recommendation on June 27, 1968 the Board of Governors approved in principle a step-by-step prohibition of customer-directed give-ups, in order to facilitate the adjustment of members and member firms to the changes in the pattern of securities trading which the prohibition is bound to bring about. Further reflection on this point has convinced us that a step-by-step prohibition would not be appropriate. The complex arrangements now existing do not lend themselves to step-by-step diminution, because they involve the use of unrelated trades as a basis for customer-directed give-ups. Thus any but an outright prohibition would result in a continuation of the present give-up practices until the final date for complete prohibition. Further, even if this were practical, in our opinion it would not be proper to permit these practices to continue.

One purpose of an interim schedule is to give the Commission, the Exchange and the customers of securities firms time in which to adjust to possibly new and, as yet, unforeseeable trading patterns, and to measure the impact of the interim schedule in light of these changes. It does not appear that the adjustment or the measurement can be accomplished unless the prohibition of customer-directed give-ups becomes effective at the same time as the interim schedule.

While a prohibition of customer-directed give-ups would be effective at the same time as the interim commission schedule, the new schedule would not be effective for at least three months. Securities firms and their customers would have this time in which to adjust to the abolition of customer-directed give-ups.

The testimony at the hearings makes it clear that the prohibition of customer-directed give-ups to be effective must be all inclusive, applying to give-ups by check or by work. It must also apply to trades both related and unrelated to the customer order which originally provides the funds to De given up. We propose that this be accomplished by adding to the first paragraph of Article XV, Section 1 of the Exchange Constitution:

"No member, member firm or member corporation shall in consideration of the receipt of listed business and at the direct or indirect request of a nonmember or by direct or indirect arrangement with a nonmember make any payments or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled."

As discussed, the Exchange firmly believes that the rule prohibiting customer-directed give-ups must be an integral part of the proposed interim nonmember commission schedule. Any minimum commission schedule, to be effective, must include a prohibition of all customer-directed give-ups.

At its June 27 meeting, the Board of Governors also recommended in principle a discount to nonmember brokers of one-third of the nonmember commission. The Board still favors this means of access to the Exchange market. However, because the question of nonmember access cannot be divorced from the question of institutional membership and because both subjects are yet to be taken up at the hearings now being conducted by the Commission, the Exchange is willing to defer action on nonmember broker access at least until those hearings are concluded.

The proposals in this letter, approved in principle by the Board of Governors of the Exchange at a special meeting yesterday, are the result of much conscientious and diligent effort by all interested parties. It is our strongest hope that the Commission will agree that these proposals will provide the best possible interim solution to the problems facing the securities industry today

Sincerely,

Robert W. Haack
President