United States Senate

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
WASHINGTON, D.C. 20510

May 19, 1975

The Honorable Ray Garrett, Jr.
Securities Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Chairman Garrett:

In reading the May 19, 1975 issues of Securities Week, I was greatly disappointed to read the following quotation: "SEC sources described the situation this way: 'To all intents and purposes, there is a fixed date for abolishing 394 in the final version – December 1….Moss was saying 'Let's do it by Sept. 1' and Williams wanted a year. They settled on six months."

In addition, the May 19, 1975 edition of the Wall Street Letter states: "SEC Commissioner, John Evans, for one, said "I've said all along that 394 will probably be eliminated one way or another by competition or by the SEC. I feel there is a lot of sympathy around the Commission for getting rid of it, but I cannot speak for all of the commissioners. Under the legislation we will take a fair objective look at 394. But I think it will be hard to find reasons to keep it."

As you may know, the Conference Report on S. 249 directs the Commission to review all exchange rules which limit or condition the ability of members to effect transactions in securities other than on such exchanges.

The Commission is directed to review such rules and report to the Congress 90 days after the enactment of the Securities Acts Amendment of 1975 as to the results of its review and to amend any exchange rules which impose a burden on competition and which do not appear necessary or appropriate to achieve the purposes of the Securities Exchange Act. Nowhere in the legislation is there an absolute Congressional mandate that the Commission repeal New York Stock Exchange Rule 394. The Commission may, if it finds the rule necessary to make the Exchange Act work countenance the continuation of Rule 394 even if it finds such rule to be anti-competitive. On the other hand, it may alter the rule in order to bring it into compliance with the new competitive standards set forth in the Securities Act Amendments of 1975 or it may abrogate the rule in its entirety. This decision is left to the Commission after making a 90-day study during which it takes into consideration the new legislative standards contained in S.249.

In my opinion, the statements attributed to your staff and to Mr. Evans are most ill-advised. The provisions pertaining to Rule 394 which are contained in this legislation are not

now contained in the 34 Act, thus, necessitating a fresh, unbiased Commission review of Rule 394. The Commission in conducting its review and, if it in fact recommends new rule changes, would be acting as a quasi-legislative body.

Therefore, I feel most strongly that the above-mentioned remarks by a member of the Commission and by an unnamed member of your staff detracts from the objective review which the Congress intended in adopting this provision of S. 249. It also detracts from the atmosphere of judicious propriety and unbiased rule making which we all have the right to expect from an independent regulatory agency such as the SEC.

With every good wish, I am

Sincerely,

Harrison A. Williams, Jr.

HAW/mk
cc: Commissioner John Evans