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6/30

963-1600

DETROIT STOCK EXCHANGE
PENOBSCOT BUILDING
TROTIT, MICHIGAN 48226

Stock Exchange
(Detroit) Rules

For Commission
calendar on: T O D A Y

Orval L. DuBois
Secretary

May 25, 1970

REC'D-S.E.C.

MAY 27 1970

Trading and Markets
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Pollack:

Pursuant to Section 17 a-8 of the Securities and Exchange Act of 1934, I present below Section 9 of Article VII of our Rules as amended:

"Section 9. Members may transact business on the Exchange for non-members who are members of the National Association of Securities Dealers, Inc., or members of another Exchange where the rules of such other Exchange permit reciprocal arrangements, or for any bank or trust company located outside the continental United States; for a commission of not less than 60% of the minimum commissions specified in Article VIII, Section 2 of the Constitution."

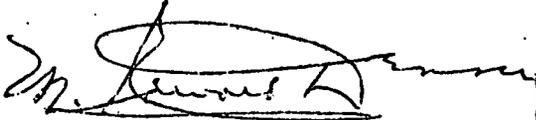
The new language added to the present Rule is underlined in the above and also the "(a)" has been removed after Section 9.

The above amended Rule was approved by the Governing Committee at a meeting held Wednesday, May 20 and is to become effective at the opening of business on July 1, 1970.

Should you have any questions concerning the above, please contact me.

Very truly yours,

DETROIT STOCK EXCHANGE


M. Edward Denny
Executive Vice President

MED:sm

cc: Milton P. Kroll

DETROIT STOCK EXCHANGE

2314 PENOBSCOT BUILDING

DETROIT, MICHIGAN 48226

883-1800
Stock Exchange
(Detroit) Rules

TER M. MACPHERSON, PRESIDENT
L. H. SMITH III, VICE PRESIDENT
LIUS POCHELON, TREASURER
EDWARD DENNY, EXECUTIVE VICE PRESIDENT
& SECRETARY

May 25, 1970

REC'D-S.E.C.

MAY 27 1970

Mr. Irving M. Pollack
Director Division of Trading and Markets
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Pollack:

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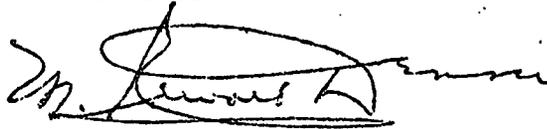
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M. Edward Denny
Executive Vice President

MED:sm

cc: Milton P. Kroll

JUN 29 1970

M E M O R A N D U M

TO: The Commission

FROM: The Division of Trading and Markets 

SUBJECT: Detroit Stock Exchange 17a-8 amending Article VII,
Section 9 of its Rules.

RECOMMENDATION: That the attached letter be sent to the Detroit
Stock Exchange.

The Detroit Stock Exchange has submitted, pursuant to Section 17a-8, a proposal to amend Article VII, Section 9 of its Rules. The rule presently provides that members may transact business on the Exchange for non-members who are members of the NASD or members of another Exchange (where the rules of such other exchange permit reciprocal arrangements) at a discount of 40% of its non-member commission. The proposed amendment will, in addition, permit this discount to any bank or trust company located outside the continental United States.

At the present time, the Hawaiian Trust Co., Ltd., a member of the Honolulu Stock Exchange, is transacting business through the Detroit Stock Exchange member firm of Wedbush, Noble, Cooke, Inc. at 40% discount. The Detroit Exchange has indicated to us that this business comprises between 15% and 25% of their volume. On July 1, 1970, banks and trust companies will, by Hawaiian state law, no longer be permitted to engage in the brokerage business. Thus, the Hawaiian Trust Co., an Hawaiian bank, is giving up its membership on the Honolulu Stock Exchange and, therefore, will no longer be eligible for the commission discount under the present Detroit rules.

It is our understanding that the Exchange's intent in amending this rule is to preserve the status quo by permitting this business to remain with the Exchange. Though the Exchange now realizes that the rule as amended will leave open the possibility of access by all banks outside the continental United States, they have assured us that it was not their intent to extend this access beyond that which presently exists. In this regard,  we have indicated to the Exchange that we are unable to perceive a self-regulatory rationale for an exchange rule which permits a commission discount to an entity outside the jurisdiction of the United States and not directly subject to the rules of the Exchange while prohibiting such a discount to a similar entity located within the United States.^{1/} We further advised them that the Exchange's ability to exercise self-regulatory responsibilities might be cited as a reason for limiting such access to banks and trusts companies in the United States.

It should be pointed out that all transactions will, as they are now, be brought to the Exchange by an Exchange member and subject to both its rules and the Commission's rules and regulations where applicable. Along these same lines, the Commission may recall that the Pacific Coast Stock Exchange permits a preferred rate of commission amounting to 75% of the non-member rate to eligible non-members approved by the Exchange. The Pacific Exchange's rule specifically provides for such preferred rates to United States banks, and the list of eligible non-members is comprised of several such banks, (including the Hawaiian Trust Co., Ltd.): Approval by the Exchange requires an application which solicits information regarding, among

^{1/} It also discriminates in favor of entities in Hawaii and Alaska and against such entities which are located in the continental United States.

other things, suspensions, expulsions, disciplinary actions and past financial problems, and whether or not the applicant files independently audited financial statements with a national securities exchange or association and/or federal or state commissions and the date of the last filing. The applicant, in addition, agrees with respect to transactions executed on the Exchange that, among other things, they will be conducted in accordance with the Constitution and Rules of the Exchange and the provisions of the 1934 Act and the rules and regulations thereunder, and that a record of all such transactions will be submitted upon the request of the Exchange. As the Commission will note, we have suggested to the Detroit Stock Exchange that, at the least, regulatory controls similar to those employed by the Pacific Coast Stock Exchange should be instituted.

* In light of the Detroit Stock Exchange's contention that its only intent is to maintain the status quo the Division recommends that the attached letter be sent to the Detroit Stock Exchange. The Exchange has indicated that its proposed rule will become effective July 1 notwithstanding our request that its implementation be delayed until the Commission has had an opportunity to properly review and comment upon the proposal. They explain that business considerations (as explained earlier in this memorandum) make such implementation necessary.



DIVISION OF
TRADING AND MARKETS

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Mr. M. Edward Denny
Executive Vice President
Detroit Stock Exchange
2314 Penobscot Building
Detroit, Michigan 48226

Dear Mr. Denny:

This is in reference to your letter of May 25, 1970, informing us pursuant to Rule 17a-8, of a proposed amendment to Section 9 of Article VII of the Exchange rules concerning the transaction of business by non-members at a reduced commission rate. Specifically, you propose to permit members to transact business on the exchange for any bank or trust company located outside the continental United States for a commission of not less than 60% of the non-member rate.

It is our understanding that this proposal to amend Section 9 arose out of the desire by the Exchange to retain certain business generated by a Hawaiian trust company through the present provision of Section 9 permitting a 40% commission discount to non-members who are members of another exchange. Due to a state law prohibiting banks and trust companies from engaging in the brokerage business, the Hawaiian Trust Co., Ltd. will, after July 1, 1970, no longer be eligible for membership on the Honolulu Stock Exchange, and, thus, will no longer be permitted access under the Section as it now reads. Therefore, in order to preserve this business, which you indicated amounts to between 15% and 25% of the Exchange volume, you propose to specifically provide for such access by banks and trust companies located outside the continental United States.

It is also our understanding that it was your intent in proposing this amendment to maintain the status quo with respect to institutional access to the Exchange and that it was not your intent to expand such access beyond that which has been permitted under your existing rules. However, the language of the amended rule as proposed will, in fact, expand that access by affording the opportunity to take advantage of your reduced commission rate to every bank outside the continental United States. At this time; we are unable to perceive a self-regulatory rationale for an exchange rule which permits a commission discount to an entity outside the jurisdiction of the United States and not directly subject to the rules of the Exchange while prohibiting such a discount to a similar entity located within the United States. Moreover, your rule as proposed discriminates in favor of entities in Hawaii and Alaska and against such entities which are located in the continental United States. The Exchange's ability to exercise self-regulatory responsibilities might be cited as a reason for limiting such access to banks and trust companies in the United States.

As you may know, the Division has in the past taken the position that broker-dealers who initiate transactions and receive commission discounts are "members" of an exchange within the meaning of the Securities Exchange Act of 1934 (the Act) by reason of their ability to "make use of the facilities of an exchange for transactions thereon . . . with the payment of a commission fee which is less than that charged the general public . . ." Because the Act refers to the term "member" as "any person," the above position is not limited to broker-dealers. As an administrative matter the Commission has distinguished regular members from those firms which are members only by reason of receiving a discount from the minimum commission rate for the purposes of the exchange's regulatory responsibilities and its undertaking in its registration statement to enforce, so far as is within its powers, compliance by its members with the amount of regulation and supervision by exchanges varies depending on the degree of participation by such "members" in the exchange markets.

In this regard, we believe that a minimum amount of regulatory controls at least along the lines of those imposed by the Pacific Coast Stock Exchange with respect to those non-members eligible for the preferred commission rate is appropriate. Specifically, but not exclusively, the Exchange should require approval of all non-members taking advantage of the discount and, with respect to all transactions executed on the exchange, the non-member should agree to the following provisions:

1. All such transactions shall be conducted in accordance with the Constitution and Rules of the Exchange.
2. The non-member is required to observe the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder.
3. The non-member will charge customers not less than the minimum public rates of commission as established by the Exchange.
4. The non-member will maintain records of any and all transactions on which the discount was supplied, and make such records available to the Exchange at any time.

The Division has no further comment regarding the proposed amendment at the present time. As you are aware, the subjects of exchange access and institutional membership are among the matters currently under examination by the Commission as part of its inquiry into the rate structures of national securities exchange. In light of this, our comments here necessarily are interim in nature.

Sincerely yours,

Irving M. Pollack, Director
Division of Trading and Markets