

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

September 5, 1975

Honorable Ray Garrett, Jr.
Chairman
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Chairman:

Although the Commission's report to Congress pursuant to Section 11A(c) (4) (A) of the Securities Exchange Act of 1934 as amended by the Securities Acts Amendments of 1975, P.L. 94-29 (June 4, 1974), concludes that exchange rules which limit or condition the ability of a member to effect a transaction off-board, as principal or agent, are anticompetitive (SEC Report, September 2, 1975, p. 30), I am disappointed that "...the Commission is not now prepared to conclude that these burdens are necessary or appropriate in furtherance of the purposes of the Act." (p. 1)

The Securities Acts Amendments of 1975 unequivocally set forth the objective of creating a national market system. With respect to the development of that system, "[i]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed." (Conference Report 94-229, p. 92) From the universe of "unnecessary regulatory restrictions," the conferees singled out for expedited removal the class of anticompetitive exchange rules which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges.

Since the Act states that the objective of the development of the national market system is to be achieved through the interaction of competitive market forces and specifies at least one class of unnecessary regulatory restrictions which precludes this approach to the system's development, why is the Commission not prepared to conclude that the anticompetitive burdens of this class of restrictions are unnecessary and inappropriate in furtherance of the purpose of the Act? I can only conclude that they are not necessary or appropriate. In fact, these anticompetitive rules prevent the evolution of the system by the interplay of competitive forces.

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The Commission, however, only goes as far as conceding that this class of regulatory restrictions may not give the free-market approach "a fair chance of success." (p. 39) With respect to the relationship between this class of restrictions and the objective of the national market system, the Commission only finds that "...it would appear more likely that off-board trading rules as presently constituted impede, rather than promote, attainment of that system." (p. 40) These are equivocal findings; I am distressed to read that the Commission is more equivocal than the conferees were.

I am concerned also by the Commission's focus on amending these anticompetitive exchange rules rather than requiring the respective exchanges to abolish them. With respect to setting competitive standards, the conferees accepted the Senate provisions which charged the SEC with an explicit and pervasive obligation to eliminate all present and future competitive restraints. The Commission does observe in its report that Congress "...appears to have determined that it is desirable to encourage the broadest possible competition..." [p. 32) In my view, the statute and the accompanying Conference Report do not just "appear" to set a broad competitive standard; they provide for expedited removal of a class of exchange rules which restrain competition and rely on the interplay of competitive forces to develop the national market system. The intent was not to provide for the interplay of less burdensome anticompetitive rules because lessening the anticompetitive impact of these rules would not permit the goal of providing for the free interplay of all competitive forces to be achieved.

The Subcommittee is most concerned that the objectives of the Securities Acts Amendments of 1975 -- maximizing competition in the Nation's securities markets in order to permit innovations leading to the development of the national market system -- are achieved as soon as possible. We intend to monitor closely the Commission's proceedings and to take what action may be necessary to insure that the Act's directives are carried out as Congress intended.

Sincerely,

JOHN E. MOSS
Chairman
Oversight and
Investigations Subcommittee

JEM: ceh