

November 17th, 1942

Glore, Forgan & Company,
135 So. La Salle Street,
Chicago, Illinois.

Gentlemen:

As you may know, we are representing the National Association of Securities Dealers in the review proceedings instituted by the Securities & Exchange Commission in which the SEC staff contends that the typical agreement among underwriters and with members of selling groups for a uniform public offering price during the period of initial distribution of a new issue is an unlawful restraint of trade.

At a recent hearing, A. P. Montgomery, of A. P. Montgomery & Company, appearing as a witness for the SEC staff, testified that so-called "penalty bids" are frequently maintained by the Manager of an underwriting group for a week or more after the termination of the agreement for uniform public offering price, or as it is sometimes phrased "after the lifting of price restrictions". In particular Mr. Montgomery testified that on the distribution of Central Power & Light 3-1/2's, First Mortgage 1969, a penalty bid was maintained by the Manager for a week after the termination of price restrictions. This seems inconsistent with the chart previously introduced by the SEC staff (purporting to compare the distribution and market behavior of this Central Power & Light issue with the Standard Bond Index for public utilities) which shows that "price restrictions were lifted" on August 28, 1939 and stabilization terminated on August 29, 1939.

We understand that your firm was Manager of the Central Power & Light issue; and for our own information, we should like to know whether on the distribution of that issue you maintained any penalty bid after "price restrictions were lifted". Indeed, we do not understand how a penalty could be maintained under those conditions. As we understand it, the members of the selling group do not necessarily report their sales to the Manager and in no case report the serial numbers of the bonds which they may have delivered on particular sales. Under these circumstances, it would seem impossible for the Manager to tell whether a bond purchased after the "lifting of price restrictions" had been sold before or after the termination of the arrangement for uniform public offering price during the period of initial distribution. Moreover, as we understand the typical contracts with selling group members, the so-called penalty provision or

withholding of commission upon bonds purchased at or below the public offering price is operative only so long as the arrangement for uniform public offering price is in effect.

Very truly yours,

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