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# National Association of Securities Dealers, Inc.

1707 H STREET N.W. WASHINGTON 6, D. C.

December 8, 1958

The Honorable Edward N. Gadsby  
Chairman  
Securities and Exchange Commission  
Washington 25, D. C.

Dear Chairman Gadsby:

The Commission's proposed Rule 17a-8 under the Securities Exchange Act of 1934 has been the subject of much discussion among members of the Association. The Board of Governors considered this Rule at its September Meeting, and the nature and extent of the Rule has been studied by the Association's Committee on Foreign Securities.

At the outset it should be stated that the Board of Governors of the Association is opposed to the adoption of this Rule in its present form. The Rule, as now written, represents a fundamental change in our approach to and relations with "non-resident persons". It would necessitate reporting activities on the part of brokers and dealers which are not only burdensome in themselves, but which could possibly be valueless, in that the Rule could be avoided by various means.

It does not seem necessary here to consider at length the possible effect the institution of this Rule might have on foreign investments in the United States. Not only could the imposition of the Rule limit the amount of expenditure of funds by non-resident persons in the United States, but it might call for counter measures in nations which are our best customers for lending and in the securities business.

The second paragraph of Release #5774 of the Commission, dated September 12, 1958, sets forth the reason for the proposed Rule. In the past there have been problems connected with violations of the Securities Act of 1933 in the sale of unregistered stock and stock where the anti-fraud provisions of that Act were involved. In connection with abuses under the Securities

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Exchange Act of 1934, it is our understanding that this related to certain problems in connection with proxy contests. It would seem that prior to adopting the proposed Rule, which would affect the atmosphere of international finance and might even have political implications, the need for the Rule should be more adequately explained. Also, the number of instances of abuses as opposed to certain situations which become matters of public knowledge should be set forth in some detail.

Should these abuses under both Acts be extensive and serious to the point where the burden of filing these reports and the danger of an adverse effect on international business interests is outweighed, then a Rule conceivably could be written which might have a better opportunity of disclosing the facts desired.

As the Rule is written now, however, the Commission would have a difficult, if not impossible, problem in obtaining the information required if banks are exempt, which they are, from the reporting requirements. Further, nominees may still be used and orders could be distributed so that no purchase involved a "significant amount".

The Rule now contemplated would provide that reports be filed not later than three business days after the date of the transaction. A firm dealing with many non-resident persons would be required to make reports which would take up an appreciable amount of the time of the firm's staff. As mentioned before, this time might be justified if the various organizations or individuals with which the Commission is concerned could not circumvent this Rule by the use of a bank, nominees or agents. Further, the question arises as to the review of such reports and what they would establish. The Commission, in turn, might have members of its staff reviewing and analyzing reports while the very persons and problems which the Rule seeks to regulate through various systems have not been the subject of report at all.

Thus, for the reason that the Rule does not solve what we understand to be the Commission's problems, that it could very conceivably create an adverse atmosphere between friendly nations where business interchange is substantial and, further, that the duties imposed upon broker/dealers are onerous, especially when reviewed in the light of the preceding two arguments, the Association is opposed to the Rule now contemplated.

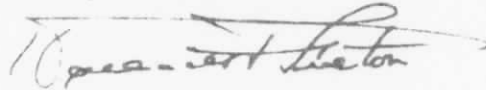
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Should the Commission disclose the extent of the abuses substantial enough to warrant some rule on this subject, then it is suggested that the Commission consult with the various departments of our government charged with the responsibility of successful operation of international policy as it relates to international good will and commerce. It is believed that this whole matter should be considered by the governmental departments affected for the reason as explained in this letter that not only is the securities business involved, but the climate of international business would also be affected.

Very truly yours,



Wallace H. Fulton,  
Executive Director

cc: Commissioners Orrick, Patterson,  
Hastings, Sargent