American Investors Fund, Inc.
Greenwich, Connecticut

February 21, 1968

Mr. Orval L. DuBois
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. DuBois:
American Investors Fund, Inc., as a person vitally interested in the proposed Rule 10b-10, submits its views in writing.

We believe that the Commission takes too narrow a view of the transaction in which an investor's money is exchanged for a pro rata share of a pooled portfolio of securities. Furthermore, the proposal is highly discriminatory against the no-load funds -- that portion of the mutual fund industry that is most in the public interest.

The true transaction that takes place when one buys shares of a mutual fund is best pictured by realizing what happens when a broker-dealer makes a sale of mutual fund shares. Suppose, for instance, $100,000 of shares are purchased either in a single sale or in a series of smaller sales. This gives the fund in question money it would not otherwise have for investing. When the money is invested, the one producing the money certainly has a part in the transaction. This total view of the transaction would appear to be what the president of the New York Stock Exchange, Robert U. Haack, had in mind in his memorandum of January 2, 1968, when he sought to "give recognition to the fact that there is more to an order than its execution."

When the transaction is thus viewed as a whole and the investment of the money not artificially separated from its generation, all the talk about rewarding people "who perform no function in connection with the transaction" (Securities and Exchange Act Release. No. 8239, page 5, top) becomes meaningless, if not completely untrue. Similarly the many like references such as the one in the same paragraph that "...executing brokers are willing to give up to persons who perform no service or function in connection with the execution of the portfolio transactions.", completely lose their thrust. Viewing the transaction as an economic one, participated in by several people, should not the person who produced the money that made the portfolio trade possible be compensated fully as much as the broker-dealer who attended to the execution of the portfolio trade? In this connection money produced by a new sale of fund shares will cause portfolio transactions not only when it is first invested but every time the

investment is changed from one security to another. If an original $10,000 investment in a fund such as American Investors Fund, Inc., grew with capital gains and dividends reinvested, to over $50,000 in less than ten years, a single turnover of the original $10,000 held in the fund at the end of the ten year period would become the turnover of $50,000 of portfolio securities, partly as a result of the original work of the broker-dealer who helped with the initial sale.

The discrimination against no-load funds that the rule would bring about must be considered from the viewpoint of: (1) the broker-dealer who produced the order, (2) the broker-dealer who executed the portfolio transaction, (3) the buyer of the fund shares, and (4) the regulatory authorities.

First from the viewpoint of the broker-dealer producing the order, the discrimination is apparent when it is realized that in many cases the give-up route is the only way that the dealer can be compensated since there are no selling commissions. If the broker-dealer simply did not have his customers invest in the no-load fund he might well handle the investment and reinvestment of the monies involved on several occasions over a period of time. Thus, when he acts in what he believes to be the customer's interests, as many do, the commissions he is foreclosing himself from receiving should be taken into consideration. Yet in operation, the proposed rule would make the dealer reluctant to ever have his customer's money go to the no-load funds for he would lose all chance of ever participating in the commissions. Surely the rule must have been surreptitiously inspired by the load-fund underwriters or salesmen who saw how it would work in their interests. If so, the Commission should not let itself be unintentionally duped. <u>The Commission should not leave the broker-dealer, who should desire his customer's best interest, with no practical alternative to selling a load fund.</u>

Next, from, the viewpoint of the broker-dealer executing the portfolio transaction, in most cases his overall costs will include customer facilities which a knowledgeable mutual fund, particularly one technically oriented, may not use. For example, the part of the commissions allocable to the broker-dealer's overhead for research if not used by the particular mutual fund customer need not be retained by the executing broker-dealer, but would seem to be properly reallowable to the broker-dealer who helped bring that money into the fund.

If the executing broker-dealer be a member of a regional stock exchange and if he were prevented by the operations of the proposed rule from giving-up to NASD member's responsible for fund sales, he would no longer be able to compete with New York Stock Exchange firms for mutual fund business, an economic blow that few could survive.

From the viewpoint of the fund shareholders, any thought that they do not benefit from increased sales is highly questionable.

With many management fees and other expenses declining percentage-wise with increased size, they do profit by reduced expenses allocable to their shares. Furthermore, the normal excess of purchases over redemptions benefits the shareholder by saving brokerage commissions on redemptions which can simply be netted against new sales -- a savings that would disappear if a fund could not continue normal growth.

Finally, from the viewpoint of the regulatory authorities themselves, do they want to be a party to putting the lid on the no-load competition? For many investors the successful no-load funds are the best investment vehicles due to economy in investing and performance.

The Commission with its eye to the public interest should not adopt any one-sided rule which would completely throw present competing forces out of balance in this highly competitive industry.

There are things that make us wonder how serious the Commission can be in pursuing the recapture-of-commissions route. If recaptures become possible, it can certainly be argued that there is a duty to so conduct the affairs of the funds so as to recover some of the commissions paid. Who will pay the cost of this? These costs will be considerable! Certainly the fund management company that is most successful in wringing the last commission dollar out of the brokerage fraternity for fund shareholders cannot achieve this without costs in manpower and record keeping. Will these costs be added to management fees?

Other practical questions relate to enforcement, for the proposed rule does not lend itself to ease of administration. How will the Commission judge if the fund managers are trying diligently enough to maximize recapture? Is it trying-for-recapture or success-in-recapturing that will be the criterion? The past give-up practices will furnish scant help, for frequently an exchange firm will be the giver and the recipient of give-ups originated by different funds, or even the same fund. Can a firm that under the new practice may not receive as much give-ups as formerly afford to give-up the same amount as it did before?

And what about those mutual funds that are organized by, and affiliated with, brokerage houses? Will such funds diligently have to force their affiliates to give-up commissions to selling broker-dealers so that the fund itself may be paid back the amount thus given up? If the penalty is to be so strict that there, no longer will be give-ups, how does the proposal deal with the question of high minimum commission rates on volume transactions at all?

The effect of the proposed rule is to eliminate the practice of give-ups to dealers for selling mutual fund shares. Needless to say, no dealer would assist in the

sale of no-load funds, the last vestige of financial incentive thus having been removed. The bizarre result would be that no-load funds would be forced to adopt sales-loads in order to remain competitive. This would not be in the public interest.

In view of the great public interest in the proper handling of the proposed rule, we request that we be heard before the full Commission on this important subject. Both George A. Chestnutt, Jr., President of American Investors Fund, Inc., and the writer of this letter, will be available to give you the benefit of our experiences.

Respectfully submitted,

American Investors Fund, Inc.

By: S. L. Sabel
Sr. Vice Pres.