

McKelvy & Company
Pittsburgh, Pennsylvania

February 22, 1968

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: Securities Exchange Act of 1934 Release #8239 (Proposed Rule 10B-10)

Gentlemen:

The following comments are concerned with the proposed Rule 10B-10. The Securities Exchange Act of 1934 granted the Commission extensive powers specifically as well as broad rule making powers. We contend that beyond question of doubt it was the intention of the Congress that these powers be exercised on behalf of all of the public and not just a part of the public. McKelvy and Company, a partnership engaged in the securities business using the services on a full time basis of close to 100 people including partners, contends that it is a part of the public entitled to the protection of the exercise of your specific powers and your rule making powers. The exercise of these powers in any given instance or instances should follow thorough and considered study as to the impact economically, politically, and socially. Analysis of your proposed rule 10B-10 causes us great concern as to the propriety of the consideration of what we consider an arbitrary rule. This proposed rule falls directly into the category of "class legislation." It favors the mutual funds to the disadvantage of banks, trust companies, insurance companies, pension funds, and other purchasers and sellers of securities.

This proposed rule embodies and encourages a rebate or "kickback" of commissions. This is obviously unfair and improper not only to the securities industry but equally so to the public, institutional and otherwise.

The Commission and its staff, to the best of our knowledge, has made no study in depth as to the economic impact of such a rule as you propose. Such a rule would be frightfully damaging and would do irreparable harm to the securities industry as a whole and more particularly to the smaller regional firms serving the public throughout the United States. Many firms, regional in character, have made an analysis of the impact of rule 10B-10 and more particularly the impact of such a rule when coupled with a volume discount. These analyses indicate that the promulgation of 10B-10 and especially when coupled with a volume discount would be not only inordinately hurtful but in many instances would be catastrophic.

We point out that many of these firms would be so badly damaged economically that there would be very, very grave danger to their being able to continue to serve the needs of the public in their particular areas of operation. These firms referred to are active in the development of our country's capital flow. These firms are responsible for the satisfying of the capital needs of many municipalities. These firms spend many thousands of dollars in the training of sales people qualifying them to perform their work with the public in a competent, professional manner. This present financial ability to so train people would be seriously impaired.

In spite of the untold damage that would be done many firms throughout the country, no opportunity, as far as we know, has been afforded these firms either individually or as a group to appear before the Commission to express their reactions to such a rule. No opportunity has been given these firms to appear before the Commission to point out the great financial losses some of them would suffer. In numerous instances these losses would be such that many would be driven out of business. Yes, you have given them an opportunity to submit in writing their comments. Beyond this -- nothing. Is this all the Commission intends to offer those whose financial responsibility is threatened? We recognize that the Commission very likely will offer a hearing to representatives of the New York Stock Exchange, of the American Stock Exchange, of the Association of Stock Exchange Firms, and, perhaps, others. While recognizing the very great demand on your time for the holding of these hearings, we further contend that, in view of the seriousness of the present situation, we believe it only fair and equitable that firms, especially regional in character, be afforded an opportunity to appear before your Commission and present their story.

We note in your Release #8239 considering proposed rule 10B-10 the striking absence of reference to a very important phase of the buying and selling of securities for mutual funds. We refer to the fact that there was no comment, whatsoever, as to your position regarding a bona fide correspondent relationship. McKelvy & Company for many years have requested mutual funds not to give orders to our home office in Pittsburgh but rather we have urged them to place these orders for our account with our correspondent, Pershing & Company in New York for execution. This is a very sound practice and is quite important in the saving of time in the transmission and execution of an order. It would be ridiculous as well as cumbersome and costly to require a mutual fund whose home office is in New York to call our office in Pittsburgh and place with us an order to buy or sell. We then would have to go by wire to our New York correspondent giving them this order. We contend that, when a mutual fund places an order for McKelvy & Company's account with our correspondent in New York, this is not a "give-up" but is a clear, direct application of the law of

agency. "Qui fecit per alium fecit per se. " (Who does it through another does it himself). We would very much appreciate knowing what position you take in such a bona fide correspondent relationship as outlined above.

An examination of your proposed rule leads directly to the conclusion that we would be moving swiftly along the road to the destruction of the minimum commission principle. Is this the intention of the Commission? Further, it is quite obvious that should this rule become effective, we would have a negotiated commission process and for one class of customers only, the mutual funds. This would be frightfully disruptive to the industry and would lead to the deplorable practice of stock exchange member firms bidding against each other for the listed business of mutual funds. An economically unsound business practice would then have been arbitrarily imposed on the securities industry. We look on this as an immoderate, improper exercise of power by the Commission. In our opinion this would create a condition in which the small firms, Stock Exchange member firms and otherwise, would find it impossible to compete. These regional firms would be deprived of an opportunity to share in the listed business of mutual funds. The result, if the proposed rule were made effective, would strongly tend to concentrate the commissions from the listed business of mutual funds in a relatively small number of very large member firms of the New York Stock Exchange. Is it the intention of the Commission to further such a concentration of business to the exclusion of the small firms serving the public throughout the country?

We appeal to you to reconsider the making effective of such a rule as 10b-10.

Very truly yours,

McKelvy & Company

Frank H. Hunter