Moore, Leonard & Lynch, Incorporated
Pittsburgh, Pennsylvania

March 14, 1968

Mr. Manuel F. Cohen
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Cohen:

In your Release No. 8239, dated January 26, 1968, you have asked for views or comments on proposed Rule 10b-10 as well as the proposals submitted by the New York Stock Exchange which are referred to in said Release. As far as the Stock Exchange proposals are concerned, while we think that they represent a basis upon which a sound rate structure could be developed, there is such an indefiniteness about them that it would be difficult to be specific. As a general comment, however, I should like to say that in any formulation of such a rate structure my kind of firm, namely the regional firm, should be represented; therefore, I propose to confine myself solely to comments relative to Rule 10b-10. In discussing the proposed Rule I have also recognized the implications that are involved in the footnote on page 9 with respect to the managers of pooled funds.

I think a complete overhauling of the entire commission rate structure should be made. I believe that such an overhauling should only be made after a thorough review of all the economic factors that go into the determination of a sound commission rate structure. I can fault Rule 10b-10 on two counts. It is not an attempt to approach the rate structure problem in its entirety but it is an attempt to patch-up some portion of the commission structure that the Commission feels should be corrected. Secondly, in its conception it ignores the impact it would have upon the securities business generally.

Rule 10b-10 and the footnote on page 9 of the Release are indirect methods used to accomplish volume discounts for mutual funds and managers of pooled funds. In our consuming desire to change the rate structure to benefit mutual fund holders, we seem to have overlooked the impact of the Rule on a very important segment of the securities industry and that is the regional firms.

I am enclosing herewith a schedule which sets forth the impact upon the economics of my firm if this Rule were in effect during the year 1967. You will note that 71% of our profit would be lost by reason of this rule. I think that if this occurs we would have to take a long look at the future of our firm to determine

what we should do. It could be that we would have to sharply reduce our staff, or if this is not considered feasible, then it could be that we would seek out a merger haven with one of the large national securities firms and, of course, at their price. Our predicament would be no different than that of the great majority of other regional firms. It is inevitable therefore, that the proposed Rule will lead to the concentration of the securities business in perhaps 10 or 12 large national firms. Do you believe that we, as a branch office of a large securities firm, would have the freedom to deal with the small businessman and the small customer the way we do now?

I am sure that by reason of the implications of the footnote on page 9 of your Release that the banks and other managers of pooled funds will have to review their procedures to determine whether they meet the fiduciary tests which are referred to in said footnote. By reason of your reference to the fact that their actions in this regard might in some cases constitute improper practices under the Federal securities laws, I presume that this would mean this Commission would assume to be the arbiter of the reasonableness of that conduct. I would think that faced with this task you would, as a matter of self-protection, develop an amendment to Rule 10b-10 which would lay down guidelines for these managers of pooled funds. Have you thought what the guidelines might be? Would it be a requirement that before a trade is executed, two or three securities firms be shopped? If that is so, in all of these transactions surely one of the large national securities firms would be asked to bid on the transaction. If this is so, would not the regional firms eventually be battered down by the large financial resources of these securities firms until such time as they are not capable of competing. On the matter of shopping, this is the first step towards a negotiated market. By your proposed Rule you are encouraging banks to provide pooled purchases and sales for their customers in order to obtain the volume discounts. If the volume discount is based upon the size of the transaction, in accumulating trades the banks will surely miss the market for some one or more of their customers.

I believe that the adoption of the proposed Rule will be disastrous from the standpoint of my firm and I further believe that it will be disastrous for the securities business generally and regional firms specifically. I can only urge that a rule of a regulatory body which will have such a drastic effect upon firms which it is required to regulate and which it has been regulating must be improper in its concept. I do not believe that it was ever intended that in the scheme of the securities acts, regulation would be used for the purpose of terminating businesses that are not immoral or fraudulent in their activities but, quite the contrary, are essential ingredients in the continuation of the economic prosperity of this country.

Very truly yours,

Thomas Lynch, III

Enclosure

DISTRIBUTION OF INSTITUTIONAL BUSINESS
1967

NEW YORK STOCK EXCHANGE: $95,610.11

AMERICAN STOCK EXCHANGE: $2,231.36

LOCAL EXCHANGES: $4,446.51

DOMINICK & DOMINICK: $32,880.74

OVER-THE-COUNTER: $27,480.84

BONDS: $40,614.22

GIVE-UPS: $43.293.00

TOTAL: $246,556.78

OTHER INSTITUTIONAL BUSINESS NOT GENERATED THROUGH THE INSTITUTIONAL DEPARTMENT WOULD REPRESENT APPROXIMATELY $300,000 OF WHICH $280,000 WOULD BE REPRESENTED BY LISTED SECURITIES.

THE ABOVE FIGURES ARE NET TO MOORE, LEONARD & LYNCH, INCORPORATED

NET BEFORE TAXES, INCLUDING OFFICERS' SALARIES AND PROFIT SHARING: $763,351.00