

NEW YORK STOCK EXCHANGE, INC.

ELEVEN WALL STREET

NEW YORK, N. Y. 10005

April 20, 1972

TO: Members and Allied Members

SUBJECT: Constitution and Rule Amendments on Institutional Membership

As the membership is aware, the question of institutional membership has been under careful consideration by the Exchange for a period of more than two years. Last Fall, the Securities and Exchange Commission held hearings at which the Exchange representatives urged that the key factor in resolving this complex issue should be to provide uniform regulation with respect to all exchanges. In February, the SEC issued a "Statement on the Future Structure of the Securities Markets," setting forth, among other things, the Commission's specific recommendations on institutional membership.

The Board of Governors subsequently endorsed the SEC proposals, subject to certain suggested revisions. Convinced that the Exchange could strengthen the central marketplace and improve service to investors by taking prompt action, the Board, in March, directed the Exchange staff to "proceed with all due speed" to develop a package of the necessary Constitution and Rule amendments along the lines of the proposals in the SEC's February statement and subsequent correspondence between the Exchange and the Commission.

A comprehensive proposal on the subject of institutional membership, including draft Constitution and Rule amendments, was presented to the Board at its policy meeting today. This proposed program, which is attached, would accomplish the following:

Constitution

- ...Eliminate the existing "parent" requirement.
- ...Add a new requirement that the predominant portion of the value of securities transactions done by a member organization must be for the account of other than "affiliated parties." This, in effect, prohibits membership primarily to recapture or rebate commissions.
- ...Add a new requirement that the predominant portion of the value of securities transactions of an "affiliated party" must be done through a broker-dealer other than the affiliated member organization.
- ...Add a new requirement that every member organization must be organized under U.S. laws and have its principal place of business in the U.S.
- ...Add a new requirement that any parent of any member organization must be organized under U.S. laws.
- ...Add a new requirement that parents of approved persons must execute agreements with the Exchange.

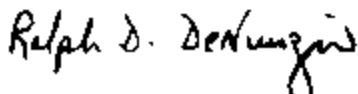
Rules

- ...Reword the definition of "parent" so that the definition can be used to include parents of approved persons or affiliated parties.
- ...Require that member organizations must be organized under U.S. law and have their principal place of business, maintain most of their assets, and carry their accounts in the U.S.
- ...Define "predominant portion" as not less than 80% and establish that all transactions effected by a member organization during the immediately preceding six calendar months be used as the basis for determining at any time a member organization's compliance with the predominant portion requirement.
- ...Establish a phase-in schedule of compliance for member organizations which do not meet the "predominant portion" requirement on the effective date.
- ...Define "affiliated parties," "bona fide market making transactions," and other terms relating to the "predominant portion" requirement.
- ...Add a provision to prevent members or allied members from becoming officers, employees or more than 5% stockholders of parents of their member organizations, except with specific Exchange approval.
- ...Eliminate the existing permission to adjust investment advisory fees for commissions received, and specifically prohibit that practice, with two stages of implementation.

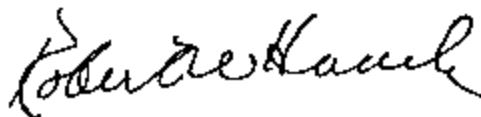
Consistent with the Exchange's long-held views with regard to the importance of equal and uniform regulation throughout the securities industry, these new provisions establish equal and uniform standards of self-regulation within our own membership. Thus, there is no disparity among requirements for existing member organizations and new member organizations; all will be required to comply with the same rules.

The issues involved in institutional membership have been debated extensively within and outside the securities industry. The Board of Governors believes that the time has now come to reach the decisions necessary to structure the industry for the future, recognizing that the institutional membership issue must be resolved.

Accordingly, the Board at this time is submitting the contemplated Constitution and Rule amendments to the membership for comment. The Board has deferred reaching a final determination on this question until there has been full opportunity to receive the views of the membership. The Board will carefully consider any comments and cordially solicits the views of member organizations on this important issue. Comments should be filed with David D. Huntoon in the Department of Member Firms, 4 New York Plaza, New York, New York 10004 by June 1, 1972.



Ralph D. DeNunzio
Chairman



Robert W. Haack
President

Proposed Amendments to NYSE Constitution and Rules
to Implement SEC Proposal on Institutional Membership

[] indicates deletions.

Underscoring indicates new language.

ARTICLE IX Sec. 7.

* * *

(b) The Board of Governors shall not approve a corporation as a member corporation unless:

(1) every director of such corporation is a holder of record and owns beneficially voting stock of the corporation; at least a majority of the directors are members or allied members; at least one of the directors is a member of the Exchange; and each director who is not a member or allied member is an approved person; and

(2) every member or allied member of the Exchange who is an employee of such corporation (unless he is in active government service or health does not permit) actively engages in its business and devotes the major portion of his time thereto; and

(3) every party who owns beneficially 5% or more of the outstanding voting stock of such corporation is a member, allied member or approved person; and

(4) the Board of Directors of such corporation shall designate its "principal executive officers" who shall be members or allied members and shall exercise supervision and control over the business of such corporation in such areas as the Board of Governors may from time to time determine; and

(5) the primary purpose of such corporation [and of any parent of such corporation] is the

transaction of business as a broker or dealer in securities; and

(6) such corporation complies with such additional requirements as the Board of Governors may from time to time prescribe.

* * *

(k) The predominant portion of the total value of all purchases and sales of securities (as defined by Rule of the Board of Governors) effected by or through a member firm or member corporation or by or through a member who is not a general partner in a member firm or a holder of voting stock in a member corporation, shall be for the accounts of other than affiliated parties. With respect to members, member firms and member corporations of the Exchange on the effective date of this subsection, the Board of Governors shall provide such period of time as it deems appropriate within which such members, member firms and member corporations shall come into compliance with the provisions of this subsection.

(l) No member firm or member corporation or member who is not a general partner in a member firm or a holder of voting stock in a member corporation shall effect any purchase or sale of securities (as defined by Rule of the Board of Governors) with or for the account of any affiliated party of such member firm, member corporation or member unless the predominant portion of the total value of all such purchases and sales of securities for the account of such affiliated party is effected by or through a broker or dealer other than such member firm, member corporation or member. With respect to members, member firms and member corporations of the Exchange on the effective date of this subsection, the Board of Governors shall provide such period of time as it deems appropriate within which such members, member firms and member corporations shall come into compliance with the provisions of this subsection.

(m) Except to the extent that any member firm or member corporation does not comply with the provisions of this subsection on the date it becomes effective, every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall

maintain its principal place of business in, the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) Except to the extent that any member firm or member corporation does not comply with the provisions of this subsection on the date it becomes effective, no member firm or member corporation shall have as a parent any party other than a citizen of the United States or a corporation or partnership created or organized under the laws of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

* * *

Sec. 11. Any person who is a director of a member corporation but not a member or allied member and any party who owns beneficially 5% or more of the outstanding voting stock of a member corporation but is not a member or allied member shall become an approved person by filing such applications and executing such agreements with the Exchange as the Board of Governors may from time to time prescribe. Every parent of any approved person shall also execute such agreements with the Exchange as the Board of Governors may from time to time prescribe.

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Rules of the Board of Governors

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Rule 2. The terms "member", "membership", "member firm", "allied member", "non-member", and "member corporation" shall have the meanings specified in Section 3 of Article I of the Constitution and the terms "approved person", "freely transferable security", "voting stock" and "non-voting stock", when used with respect to a member corporation, shall also have the meanings specified in Section 3 of Article I of the Constitution.

The term "member organization" includes "member firm" and "member corporation".

The "parent" of another party means any party who has the power to exercise controlling influence over the management or policies of such other party, unless such power is solely the result of an official position with such other party, except that the "parent" of any member organization shall not include any other member organization.

Any party who owns beneficially, either directly or indirectly, more than 25% of the voting securities of a first corporation or more than 25% of the outstanding voting securities of any other corporation which directly or through one or more subsidiaries owns beneficially more than 25% of the outstanding voting securities of the first corporation, shall be presumed to be the first corporation's parent. Any party who does not so own more than 25% of the voting securities of a corporation shall be presumed not to be such corporation's parent. Any such presumption may be rebutted by evidence but shall continue until a determination to the contrary has been made by the Board of Governors.

* * *

Rule 312. (a) Each member organization, through an Exchange member who is a general partner or a holder of voting stock in the member organization, shall promptly give or cause to be given to the Secretary of the Exchange notice in writing on such form as may be required by the Exchange (1) on Form AD-12, of the death, retirement, or other termination of any party required to be approved by the Exchange under Rule 311, (2) of the dissolution of the member organization, [or] (3) of the fact that the primary purpose of such member organization [or of any parent of such member organization] has ceased to be the transaction of business as a broker or dealer in securities[.], or (4) of the fact that the predominant portion of the total value of all purchases and sales of securities effected by or through such member organization has ceased to be for the accounts of other than affiliated parties.

* * *

Rule 313.25 * * *

(4) Each party which is an approved person of a member corporation and every parent of any such approved person shall enter into such agreements with the Exchange as shall be required in order to assure compliance with the provisions of subsection (1) of Article IX, Section 7 of the Constitution and the Rules thereunder.

NEW RULE 314.16

.16 Except to the extent that any member organization does not comply with this paragraph on the date it becomes effective, every member organization shall be a corporation or partnership created or organized under the laws of, and shall maintain its principal place of business in, the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico. Every member organization shall maintain all assets except those committed to the operation of foreign business and, unless otherwise permitted by the Exchange, shall carry all accounts in, one of the States of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

* * *

Rule 318. The primary purpose of every member organization [, and any parent of any member corporation,] shall be the transaction of business as a broker or dealer in securities. With the prior approval of the Exchange, member organizations may engage in any activities kindred to the securities business.

[No member corporation shall have as a parent any party (other than a member or allied member or such member corporation) unless, for a period of not less than two years, the primary purpose of such party has been and continues to be the transaction of business as a broker or dealer in securities, and such party is and continues to be registered with the Securities and Exchange Commission as a broker or dealer in securities under the Securities Exchange Act of 1934 and promptly files with the Exchange a copy of its registration statement under said Act and of each amendment thereto.]

The term "predominant portion" as included in subsections (k) and (l) of Article IX, Section 7 of the Constitution shall mean not less than 80%.

In determining compliance at any time with subsections (k) and (l) of Article IX, Section 7 of the Constitution all purchases and sales of securities during the immediately preceding six calendar months effected by or through the member organization or member or effected for the account of the affiliated party of the member organization or member shall be used as the basis.

Every member organization or member not in compliance with the requirements of subsections (k) and (l) of Article IX, Section 7 on the date on which those provisions become effective shall use its or his best efforts to come into compliance with those provisions as soon thereafter as reasonably practicable. Not later than 1 year after the effective date of subsection (k) of Article IX, Section 7 of the Constitution, not less than 60% of the total value of all purchases and sales of securities effected by or through any such member organization or member shall be effected for the accounts of other than affiliated parties. Any such member organization or member shall comply with the provisions of such subsection (k) not later than 2 years after such effective date. Not later than 1 year after the effective date of subsection (l) of Article IX, Section 7 of the Constitution, no such member organization or member shall effect any purchase or sale of securities with or for the account of any affiliated party of such member organization or member unless not less than 60% of the total value of all purchases and sales of securities for the account of such affiliated party is effected by or through a broker or dealer other than such member organization or member. Any such member organization or member shall comply with the provisions of such subsection (l) not later than 2 years after such effective date.

Unless otherwise permitted by the Exchange every individual member must be actively engaged in the securities business and devote the major portion of his time thereto, and every member and allied member in a member organization must be actively engaged in the business of his organization and devote the major portion of his time thereto.

Without prior approval of the Exchange, no individual member and no member or allied member in a member organization shall become:

- (1) a partner in any non-member business organization;

(2) an officer or employee of any non-member business corporation, firm or association;

(3) an employee of any firm or individual engaged in business; [or]

(4) associated with any outside securities, financial or kindred business[.]; or

(5) an officer or employee of, or the beneficial owner of more than 5% of any outstanding class of securities issued by, any parent of such member organization, which parent is not itself a member organization.

* * * Supplementary Material:

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.12 Definitions. - For the purpose of this Rule, a member organization's [, or its parent's] activities shall be considered to be the "transaction of business as a broker or dealer in securities" when such member organization including its approved corporate affiliates and subsidiaries [, or its parent, as the case may be,] acts as a floor trader, specialist, so-called "two dollar broker", odd lot broker, arbitrageur, or holds itself out to, and transacts business generally with, the public as a broker or dealer in securities, including servicing customers' accounts and introducing them to another member organization. A member organization's [, or its parent's,] "primary purpose" shall be presumed to be the transaction of business as a broker or dealer in securities, if its gross income (including [, in the case of a member organization,] the gross income of its corporate affiliates and subsidiaries controlled by the member organization) from activities of the type described in the preceding sentence and from interest charges imposed with respect to debit balances in customers' accounts is at least 50% of its total gross income (including [, in the case of a member organization,] the gross income of its corporate affiliates and subsidiaries controlled by the member organization). Any member organization [, and any parent of a member corporation] whose gross income fails to satisfy the above requirement shall be presumed not to have as its primary purpose the transaction of business as a broker or dealer in securities. Any such presumption may be rebutted by evidence but shall continue until a determination to the contrary has been made by the Board of Governors.

[The term "parent" means any party who has the power to exercise controlling influence over the management or policies of a member corporation, unless

such power is solely the result of an official position with such member corporation. Any party who owns beneficially, either directly or indirectly, more than 25% of the voting securities of a member corporation or more than 25% of the outstanding voting securities of any other corporation which directly or through one or more subsidiaries owns beneficially more than 25% of the outstanding voting securities of the member corporation, shall be presumed to be the member corporation's parent. Any party who does not so own more than 25% of the voting securities of a member corporation shall be presumed not to be such corporation's parent. Any such presumption may be rebutted by evidence but shall continue until a determination to the contrary has been made by the Board of Governors.]

The following terms shall have the following meanings for the purposes of subsections (k) and (l) of Article IX, Section 7 of the Constitution and this Rule:

In computing the total value of purchases and sales of securities there shall be excluded all purchases and sales of any "exempted security" as defined in Section 3(a)(12) of the Securities Exchange Act of 1934 and all purchases and sales of "short-term paper" as defined in Section 2(a)(38) of the Investment Company Act of 1940. In addition, there shall be excluded all purchases and sales of securities with respect to which the member or member organization acts as an "underwriter" as that term is defined in Section 2(11) of the Securities Act of 1933.

The term "affiliated party" shall include:

(1) any party (including any partner, stockholder or subordinated lender) who has a participation of 5% or more in the profits of the member organization, or owns beneficially 5% or more of the outstanding voting stock of the member corporation, or has contributed 5% or more of the capital of the member organization, every parent of any such party and every subsidiary and its subsidiaries (other than the member organization and its subsidiaries) of any such parent;

(2) the member or member organization to the extent he or it trades for his or its own account, excluding from such trades, however, such transactions as are included within the definition of "bona fide market making transactions", and excluding also, "non-inventory principal transactions" as defined herein effected by such member or member organization;

(3) any institution which controls, is controlled by or is under common control with, the member or member organization (whether through the ownership of voting securities, by contract or otherwise); or

(4) any securities account of any institution

which account is controlled by or is under common control with the member or member organization (whether through the ownership of voting securities, by contract or otherwise), but no account shall be deemed to be controlled by another party solely by reason of the fact that such other party has discretion over such account.

The term "bona fide market making transactions" shall include:

(1) any transaction by a registered specialist in a security in which he is so registered;

(2) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(3) any transaction by a block positioner acting as such. For the purpose hereof a block positioner shall mean a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers' orders on the Floor;

(4) any transaction effected in conformity with a plan designed to eliminate floor trading activities which are not beneficial to the market which plan has been adopted by the Exchange and declared effective by the Securities and Exchange Commission;

(5) any transaction by a market maker acting as such. For the purpose hereof a market maker shall mean a member organization which, with respect to a particular security, holds itself out (by entering indications of interest in purchasing and selling in an inter-dealer quotations system or otherwise) as being willing to buy and sell for its own account on a continuous basis otherwise than on a national securities exchange.

(6) any stabilizing transaction effected in compliance with Rule 10b-7 under the Securities Exchange Act of 1934 to facilitate a distribution of such security in which the member organization effecting such transaction is participating;

(7) any bona fide arbitrage transaction;

(8) any transaction made with the prior approval of a Floor Official to permit the member effecting such transaction to contribute to the maintenance of a fair and orderly market, or any purchase or sale to reverse any such transaction; or

(9) any transaction to offset a transaction made in error.

The term "non-inventory principal transaction" shall mean a retail transaction as principal in a security in which the member organization had a firm order from a customer to buy or sell and, prior to making the transaction for approximately the quantity necessary to complete the order, neither made a trading market nor carried an inventory in the security.

The term "institution" shall mean any bank, savings and loan association, pension or other employee benefit fund, charitable foundation, educational or religious institution (including its investment or endowment fund), investment company (including its adviser) and insurance company.

The term "investment company" shall have the meaning given that term by Section 3 of the Investment Company Act of 1940.

The adviser of an investment company shall mean the investment adviser of an investment company which adviser is registered under the Investment Advisers Act of 1940.

The term "pension and other employee benefit fund" shall mean any fund which is available for the payment either from principal or income, or both, to persons who are employees, or to members of the families, dependents, or beneficiaries of such persons, of one or more of the following benefits: Medical or hospital care, pension on retirement or death of employees, benefits under a profit-sharing-retirement plan, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness benefits, or accident benefits, or pooled vacation, holiday, severance or similar benefits, or defraying the cost of apprenticeship training programs.

The term "bank" shall mean any organization, whether incorporated or not, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks.

The term "insurance company" shall mean a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies.

The term "savings and loan association" shall mean a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution.

Any affiliated party of a member or member organization shall be deemed to be an affiliated party of any other member or member organization to the extent such other member or member organization effects transactions in securities with or for the account of such affiliated party in consideration of, or pursuant to any understanding or agreement providing for, the effecting of transactions in securities by one or more members or member organizations with or for the account of any affiliated party of such other member or member organization.

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STATISTICAL AND INVESTMENT ADVISORY
SERVICES

* * * Supplementary Material:

[Also see Rule 369(3)(F)(¶ 2369).]

.10 To whom furnished. - A member or member organization may furnish:

(1) To a professional non-member (i.e., broker-dealer in securities or commodities, insurance company, investment advisor, investment manager, bank, trust company, foundation, professional trustee, or one engaged in any closely allied activity), statistical and investment advisory, services:

(A) prepared by the member or member organization; or

(B) prepared by others and reissued by the member or member organization in his or its own name with the consent of the original issuer or publisher, provided the reissuing member or member organization is not required to pay for such consent.

(Exception: This policy does not prohibit the furnishing by a member or member organization to a non-member professional (i.e., broker-dealer in securities or commodities, insurance company, investment adviser, investment manager, bank, trust company, foundation, professional trustee, or one engaged in any closely allied activity), of publications of nominal cost, i.e., aggregating not more than approximately \$30 per year, per non-member professional.)

(2) To another member or member organization or to a non-member customer who is a non-professional, statistical or investment advisory services:

(A) prepared by the member or member organization; or

(B) prepared by others and reissued by the member or member organization.

The meaning of "statistical investment advisory services" above is restricted to publications or services intended to aid professional or non-professional clients of member organizations in investment decisions concerning securities or commodities. All such publications or services must be clearly and prominently identified as being a publication or service of the original issuing member organization. (The name of the original issuing member organization may be omitted if the distributing member organization clears its listed business through the issuing member organization.)

.11 Fees. - Such service which is prepared or reissued by the member or member organization consistent with .10 above, may be furnished by the member or member organization to another member or member organization or to a non-member, either free of cost or on a fee basis. [If such service is furnished on a fee basis, the fee may be adjusted in accordance with commission business received from the other member or member organization or from the non-member.] Any contract or arrangement entered into after [2 weeks following effective date] _____, 1972, pursuant to which such service is to be furnished on a fee basis, shall provide that such fee may not be adjusted in accordance with commission business received from the other member or member organization or from the non-member. Members and member organizations furnishing such service pursuant to a contract or arrangement in effect on [2 weeks following effective date] _____, 1972 providing for the furnishing of such services on a fee basis which is adjusted in accordance with the commission business received from the other member or member organization or from the non-member shall as promptly as possible and in no event later than [3 months following effective date] _____, 197 terminate all such fee adjustment arrangements.

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