Memorandum

THE New York Stock Exchange

TO: Board of Directors

September 10, 1973

FROM: Donald L. Calvin

SUBJECT: Letter to Comptroller of the Currency and Chairman of the SEC

Attached for your information is a copy of a letter which is being submitted to the Comptroller of the Currency expressing the Exchange's concern about the sale of NYSE listed stocks by certain national banks by means of so-called Automatic Investment Service or Automatic Stock Investment Plans.

The letter to the Comptroller of the Currency is being submitted to the Chairman of the SEC by way of the attached transmittal letter.

Donald L. Calvin

THE New York Stock
Exchange

James J. Needham
Chairman and
Chief Executive Officer

September 7, 1973

The Honorable James E. Smith
Comptroller of the Currency
15th and Pennsylvania, N. W.
Washington, D. C. 20220

Dear Mr. Smith:

The New York Stock Exchange wishes to voice its concern with the activities of certain national banks under your jurisdiction which are selling stocks listed on the New York Stock Exchange by means of so-called Automatic Investment Service or Automatic Stock Investment Plans (hereinafter referred to as the "Plan" or "Plans").

Existing and potential investors of small means are being actively and aggressively solicited by these national banks to buy certain stocks listed on the New York Stock Exchange. These solicitations are being directed to potential investors in listed stocks who are not necessarily customers of the banks. They are being urged to purchase listed stocks from the banks without the attendant regulatory safeguards which accompany the same activities by member organizations of the New York Stock Exchange and other broker-dealers.

Full page advertisements, radio commercials and colorful brochures are being used in mass merchandising campaigns to induce potential investors to purchase listed stocks from the banks by making small monthly purchases of from $20 to $500.

To our knowledge, no effort is being made by the banks to counsel these persons on their investment needs, nor is any inquiry made as to whether they should be purchasing the listed stocks being promoted under the Plan.

In brief, none of the usual regulatory requirements imposed by the New York Stock Exchange on its member organizations for the protection of investors are being applied in connection with the sale of listed stocks by banks under the Plans.

Clearly, these national banks are engaged in the business of "selling, or distributing, …securities" within the meaning of those terms under Section 21 of the Glass-Steagall Act.

Further, the permission granted by Section 16 of the Glass-Steagall Act to national banks to purchase and sell securities as an accommodation to customers does not authorize or permit the broad retailing and merchandising of listed stocks to non-bank customers as is being done under the Plans.

In addition, it is our understanding that the intent of the Glass-Steagall Act is to divorce the banking business from all aspects of the securities business.

Broker-dealers in securities are rigidly regulated by either the appropriate self-regulatory authorities or the Securities and Exchange Commission because the sale of securities must be made under standards consistent with the inherent public interest.

It is our understanding that banks were specifically exempted from the definitions of "broker" and "dealer" in the Securities Act of 1934 on the basis that banks would not be engaging in the sale of securities under the Glass-Steagall Act, except as an accommodation to their customers, and accordingly, need not be subject to the regulation of the SEC as are others engaged in the sale of securities.

Therefore, it seems clear that national banks are not permitted to sell securities under the Automatic Investment Service or Automatic Stock Purchase Plan schemes under the Glass-Steagall Act.

The legislative history and intent of both the Glass-Steagall Act and the Securities Exchange Act of 1934 clearly indicate that the Congress did not intend that national banks be permitted to engage in the sale of securities as they are doing under these Plans.

Accordingly, we respectfully suggest that the letter ruling of February 27, 1973 by the Office of the Comptroller of the Currency be reviewed in light of the practices which have developed since that ruling was issued. If you deem it advisable, it may be appropriate to give interested parties an opportunity (which we understand was not afforded prior to the issuance of the February 27, 1973 ruling) to be heard. If such a proceeding is instituted, we would suggest that all national banks be advised that the February 27, 1973 ruling is rescinded and no new Plans be instituted and existing bank-sponsored Plans be terminated pending a final determination of the issue.

Very truly yours,

James J. Needham

cc: Chairman Ray Garrett, Jr.
Securities and Exchange Commission

THE New York Stock Exchange

James J. Needham
Chairman and
Chief Executive Officer

September 7, 1973

Chairman Ray Garrett, Jr.
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dear Chairman Garrett:

Enclosed is a copy of a letter we are submitting to the Comptroller of the Currency today voicing the New York Stock Exchange's concern about the activities of certain national banks which are selling stocks listed on this Exchange by means of so-called Automatic Investment Service or Automatic Stock Investment Plans.

In the enclosed letter, we respectfully request that the letter ruling of February 27, 1973 by the Office of the Comptroller of the Currency be reviewed in light of practices which have developed since that ruling was issued. We also suggest that, if the Comptroller deems it advisable, interested parties be given an opportunity to be heard on this issue. If such a proceeding is instituted, we further suggest that all national banks be advised that the February 27, 1973 ruling is rescinded and no new Plans be instituted and existing bank-sponsored Plans be terminated pending a final determination of the issue.

The sale of listed stocks under these Plans also raises issues which merit the careful consideration of the Commission.

Very truly yours,

James J. Needham

cc: Hon. James E. Smith, Comptroller of the Currency