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THE MINIMUM COMMISSION SYSTEM AND THE NEW YORK STOCK EXCHANGE

I. Minimum Commission System

As part of its exhaustive study of the securities market in 1963,[1] the Securities and Exchange Commission (SEC)[2] examined the minimum commission[3] rate schedule which applies to every transaction executed on the New York Stock Exchange (NYSE). The study concluded that market practices varied materially from the commission regulations established by the Board of Governors of the NYSE. The SEC findings and later developments in the securities market effected a major revision in the rate structure.[4]

The minimum rate structure in existence at the time of the SEC study established, among other things, rates for members of the exchange which differed from those applicable to non-member brokers.[5] Commission rates paid by the general public were identical to the rates paid by non-member brokers when dealing with member brokers.[6] The rate structure made no allowance for volume discounts. Consequently, a broker's commission was determined by the value of round lots, *i.e.*, any multiple of the unit of trading (which is usually 100 shares), of the order received, and the customer was not given a discount in proportion to the size of his order.[7]

As a result of the inflexible rate structure, many members of the securities community have suffered economically. For example, institutional investors who buy and sell large blocks of stock were subject to high commission rates since discounts were not allowed for volume trading. "[T]he commission which a member firm is required by Exchange rules to charge its customer on a 10,000 share transaction is 100 times the commission it is required to charge on a 100 share transaction and the commission on 100,000 shares is 1000 times the commission on 100 shares."[8] It was suggested that the increased effort expended on the execution of a large transaction, compared with the effort made on a small transaction, did not correspond to the increased commissions charged on large block transactions.[9] The rate structure

1. SEC, Special Study of Securities Markets (1963).

2. The SEC has the power to regulate commissions pursuant to § 19b of the Securities Exchange Act of 1934. 15 U.S.C. § 78s(b)(9) (1964).

3. A commission is that fee which must be paid to an agent for executing an order to purchase or sell securities. The uniform commission structure has been a part of the NYSE since the exchange's establishment in 1792. G. Leffler & L. Farwell, The Stock Market 382 (3d ed. rev. 1963). It is suggested that the fixed commission was an incentive to brokers to join the NYSE and to insure the auction-like quality of the market.

4. See note 35 infra.

5. Special Market Study Release No. 30, [1961-1964 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 76,921, at 81,422 (SEC July 17, 1963).

6. Id.

7. Id.

8. Securities Exchange Act Release No. 8239, [1967-1969 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 77,523, at 83,080 (SEC Jan. 26, 1968).

likewise made no allowance for reduced commissions to be paid by non-member brokers, although such allowances were made for member brokers dealing with other member brokers.

II. Business Practices

To avoid the harsh results of the minimum commission rates, members of the financial community devised certain practices to achieve the flexibility necessary in business transactions. Since member brokers compete for the business of non-member brokers, and since non-member brokers must pay the fixed commission, member brokers would, in a later transaction, allow non-members to recoup a portion of the high commission paid the member for executing the prior order. For example, a member broker would trade with the non-member broker on a regional exchange or over-the-counter to compensate the non-member for the large commission paid to the member during the prior transaction executed on the NYSE. The regional exchanges and over-the-counter markets are not governed by the NYSE rules, and thus the brokers could provide for rebates by way of this reciprocal business arrangement.[10] The SEC also discovered that many member brokers furnished non-member brokers or large block investors with certain services, such as research assistance, wire services and promotional material[11] to return, in effect, part of the paid commission. Unlike the NYSE, many regional exchanges allowed commission rebates to their brokers as an incentive for trading on the smaller regional exchanges.[12]

Non-member brokers on regional exchanges often act as "clearing agents" in order to reclaim a portion of a large commission paid to a member broker for an earlier transaction executed on the NYSE. The member broker will use the regional exchange to secure the order of another customer and declare the regional broker a "clearing agent". Regional exchange rules allow "clearing agents" to retain as much as 50% of the commission.[13]

Another of the more significant developments which have undermined the commission rate structure is the practice of permitting give-ups. Give-ups are very similar to the business practices previously discussed. The major difference is that give-ups are actually ordered by the customer rather than arranged by the brokers. A give-up occurs when a large investor directs the brokerage firm, which it has used to execute a transaction on the exchange, to give part of its commission to another firm. This is done to reward the second firm for some service it has rendered the investor and can obviously be agreed to only if the commission received by the executing firm, less the give-up, is adequate to compensate that firm for its efforts. Therefore, it

9. Id.

10. Special Market Study Release No. 30, [1961-1964 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 76,921, at 81,422 (SEC July 17, 1963).

11. Id.

12. Id.

13. Securities Exchange Act Release No. 8239, [1967-1969 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 77,523, at 83,082 (SEC Jan. 26, 1968).

would appear, especially in cases where a substantial percentage of the commission is given up, that the original minimum commission established by the exchange and charged by the executing firm was more than adequate; otherwise the member firm would be unwilling to give up part of that commission.

The mechanics of executing give-ups are rather involved, largely due to the NYSE's rule prohibiting give-ups to firms who are not members of the exchange.[14] Two of the more commonly used procedures are set forth below. Under the first method, the NYSE member who must execute the sale on the NYSE will then execute other unrelated sales on regional exchanges which do permit give-ups. All or part of the commissions on these sales will be given up to non-New York Exchange members as directed by the original investor.[15] A second plan for avoiding the prohibition against give-ups requires the exchange firm to buy services from the non-member, who is to receive the give-up, at a price considerably in excess of the actual value of the service.[16]

Despite the exchanges' prohibitory rules,[17] give-ups by exchange members continue to exist and they constitute an important aspect of the securities industry. The average give-up is usually estimated to be 40% of the original commission[18] and the total amount of give-ups per year was stated, in 1966, to be about $25 million annually.[19] This figure was undoubtedly much higher in 1968. "[W]hat the rate schedule fails to do, the industry accomplishes informally. . . ."[20]

Important as the give-up is to the industry as a whole, it has a greater effect on certain segments of the industry, especially the regional exchanges and the small investment houses. Banning give-ups "would deal an almost mortal blow to several of the smaller regional exchanges which have thrived in recent years as a direct result of the give-up system."[21] The importance of give-ups to the regional exchanges may be illustrated by the following examples. Between 1960 and 1965 the Detroit Stock Exchange had a very liberal give-up policy, and during this period its dollar volume quadrupled as compared to a 93% increase in the New York Stock Exchange's volume.[22]

14. NYSE Const. art. XV, § 1, in NYSE Guide ¶ 1701.

15. N.Y. Times, July 20, 1968, at 33, col. 7.

16. Id. at 38, col. 5-6.

17. It should be noted that the New York Stock Exchange and the Midwest Exchange are the only exchanges that have any rules against give-ups. Bus. Week, Jan. 14, 1967, at 125.

18. Wall St. J., Jan. 3, 1968, at 3, col. 3. Cf. Wall St. J., July 10, 1968, at 4, col. 3. Although no figures are available, it is generally believed that virtually all give-ups occur on large transactions executed by institutional investors.

19. Wall St. J., Dec. 1, 1966, at 1, col. 6.

20. Special Market Study Release No. 30, [1961-1964 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 76,921, at 81,422 (SEC July 17, 1963).

21. Graham, Possible Effects of Proposed New Commission Structure, 107 Trusts and Estates 841, 844 (1968).

22. Bus. Week, Jan. 14, 1967, at 125.

Following a liberalization of the give-up policies of the other exchanges, the Detroit Exchange's volume increased only 15% as compared to the New York Exchange's increase for the same year of 38%.[23] The reverse occurred when the Boston Stock Exchange amended its rules to allow give-ups. In the first ten months of the following year the exchange's volume exceeded that of the entire previous year by 57%.[24]

The importance of give-ups to regional exchanges is matched by their necessity to many small brokerage firms. Government figures show that in 1966, give-ups amounted to approximately 60% of the average net income of small brokers and non-New York Stock Exchange brokers.[25]

The effect of eliminating the give-ups would obviously be extensive and harmful to these two groups. Those who support the give-up contend that there would be wider adverse results. They point out that the regional exchanges and the small firms might be forced out of business if the give-up were outlawed[26] and contend that this is detrimental to the investment community since it would result in a decrease in competition. They also say that ending the give-up, which is often used to reward firms for carrying on research for the investor,[27] would result in a decrease in the use of research by these firms.[28] A further danger of ending give-ups is that it might encourage

23. Id.

24. Id. at 126.

25. N.Y.Times, July 18, 1968, at 48, col. 5. See Morgello, Why the 'Give-Up'—And Why It's Doomed, Newsweek, July 22, 1968, at 67; Wall St. J., Nov. 9, 1966, at 4, col. 3.

26. This is true as to the firms because investors who now reward them by give-ups would find it difficult to reward them directly, by placing their orders directly with the small firm. This is due to the fact that the small firms are not in the position to execute the large transactions of these institutional investors. To execute such a transaction, the firm must be able to buy large blocks of shares which it is at that time unable to sell. For example, if the investor wishes to sell 75,000 shares of stock, the firm may only be able to find buyers for 50,000; the firm must therefore buy 25,000 shares itself to complete the transaction. Small firms are generally unable to afford the necessary outlay.

Throughout the discussion of give-ups the distinction between the mutual fund itself investing and people investing in the mutual fund must be kept in mind. In the former, efficiency would demand that the fund use one broker to execute the transaction; in the latter, competition would require the fund to use as many brokers as possible since the greater the number of brokers selling shares in the fund, the greater the possibility of selling fund shares.

27. The importance of this position has been undermined to a degree by testimony before the SEC. Under questioning, John Haire, the Chairman of Anchor Corp., a mutual fund, agreed that the major portion of give-ups are given as a reward for selling fund shares, and that only about 16% are given for research. See N.Y. Times, July 11, 1968, at 60, col. 4; Wall St. J., July 25, 1968, at 2, col. 3.

28. The reasons for this are numerous. First, it must be understood that while, in the case of mutual funds, research costs are paid out of management fees, brokerage commissions are paid by fund shareholders. If give-ups were abolished, the funds would either have to forego research or spend management money for it. The latter isn't likely since it would necessitate an increase in these fees which both the SEC and fund shareholders have already objected to as excessive. Morgello, supra note 25. Secondly, a decrease in the use of re-

funds and investment firms to turn over their portfolios more rapidly than they would otherwise like to, in order to generate commissions to reward the people now compensated by give-ups.[29] Finally, those who support the give-up point out that its abolition might cause mutual funds and other large investors to parcel out orders to many firms, thus decreasing the efficiency of the entire process and threatening the order of the market.[30]

Despite these arguments the SEC pursued its course of attacking the give-up, which the SEC contends is a rebate and is detrimental to the efficient operation of the exchange.[31] The SEC argues that give-ups benefit the funds rather than their shareholders, and therefore may constitute fraud against these shareholders.[32] It holds that where a mutual fund manager can "recapture for the benefit of the fund a portion of the commission paid by the fund, he is under a fiduciary duty to do so . . . ."[33] To implement this belief, the SEC has proposed several rules concerning give-ups,[34] and the stock exchanges have suggested proposals of their own.[35]

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search, with the probability of a resulting deterioration of performance, might result from the abolition of give-ups because it would cost more to pay for research outright. Wall St. J., Aug. 1, 1968, at 2, col. 3.

29. Loomis, The SEC Has a Little List, Fortune, Jan. 1967, at 111, 114.

30. N.Y. Times, Jan. 21, 1967, at 39, col. 1.

31. Wall St. J., Aug. 5, 1966, at 2, col. 3.

32. N.Y. Times, Jan. 26, 1968, at 73, col. 1.

33. Id. at 78, col. 5.

34. It shall be unlawful for any registered investment company or affiliated person of such registered investment company to directly or indirectly, to order or request any broker or dealer:

(a) to pay or arrange for the payment, directly or indirectly, of all or any portion of a commission on any securities transaction to any broker, dealer or any other person unless pursuant to a written contract the full amount of such remittance is required to be paid over to such registered investment company, or fees owed by or charged to such registered investment company are required to be reduced in an amount equal to the remittance;

(b) to designate or employ any broker or dealer on any transaction to transmit, execute or clear a transaction or to perform any other function for which compensation is required or made unless pursuant to a written contract the full amount of such compensation is required to be paid over to such registered investment company or fees owed by or charged to such registered investment company are required to be reduced in an amount equal to such compensation. Securities Exchange Act Release No. 8239, at 9 (SEC Jan. 26, 1968) (Not reprinted in CCH).

Had this proposal been adopted, it would have been a temporary rule, effective until the results of the 1968 SEC Hearings into the Minimum Commission System were disclosed. The SEC proposal did not attempt a material variation in the commission rate schedule nor did it attempt to strengthen the NYSE rule on fixed rates. Rather, it would have imposed a fiduciary duty on managers of investment companies to use give-ups for the benefit of their principals, the individual investors. Securities Exchange Act Release No. 8239, [1967-1969 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 77,523, at 83,085-86 (SEC Jan. 26, 1968).

35. The NYSE interim rule which was put into effect on December 5, 1968, permits volume discounts, determined by the size of a single order as well as the portfolio business transacted by the individual investor during a particular period of time. The new rule also prohibits certain types of business practices which were previously used to escape the ap-

The abolition of the give-up, while certainly not welcomed by the investment community, has not been fought as hard as might have been expected, largely because the very existence of the give-up and the business practices previously discussed attest to the inequities of the minimum commission. Thus, SEC and exchange proposals regarding give-ups[36] were often coupled with proposals for volume discounts.[37]

It seems obvious that a minimum commission which, when applied to large transactions, allowed an average of 40%,[38] and up to 80%[39] of the commission to be given away, is excessive, at least as it applies to these large transactions. However, arguments have been presented against a volume discount. One expert contends that it would result in an increase in the commission charged smaller customers.[40] While this is a possibility, it seems improbable in view of the existence and powers of the SEC.[41] According to the same expert, the only alternative to such an increase, in the event of a volume discount, would be a deterioration in the services and personnel in the industry, an inhibition of the flow of capital into the industry, the extinction of smaller firms, and a decrease in the ability of firms to meet reg-

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plication of the rate schedule. Reciprocal business arrangements are permitted as long as they are not customer directed. Customer directed give-ups are eliminated with a few exceptions. A customer who uses the offices of another firm for a short period of time may direct the broker to whom he paid the full commission to give-up part of that commission to the other firm since the customer used the firm's office facilities as a convenience. Also, a NYSE Exchange Brief noted that the proposal did "not prevent broker-dealer affiliates of institutions from crediting commissions to those institutions." The NYSE rule reduced rates applicable to non-members on orders over 1,000 shares and decreased member commissions by 7%. As a result of this new rule, the SEC may possibly require the regional exchanges to prohibit customer directed give-ups. Since many stocks are listed on the NYSE and the regional exchanges, it would be inequitable for regional exchanges to continue their policy of permitting give-ups on NYSE stocks while such give-ups would be prohibited if the stocks had been sold on the NYSE. This interim rule will be effective until the NYSE, regional exchanges, and the SEC have completed the extensive examination of the commission rate structure and a permanent rate schedule is established. Securities Exchange Act Release No. 8239, [1967-69 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 77,523, at 83,084-85 (SEC Jan. 26, 1968).

36. SEC and NYSE proposals, supra notes 34 and 35.

37. "Studies by the New York Stock Exchange show that the number of transactions involving 10,000 shares or more has increased from 2171 in 1965 to 6685 in 1967, that the number of shares involved in these transactions has more than tripled, and that their share of reported volume has increased from 3.1 percent to 6.5 percent." Securities Exchange Act Release No. 8239, [Transfer Binder 1967-69] CCH Fed. Sec. L. Rep. ¶ 77,523, at 83,080 (SEC Jan. 26, 1968).

38. Wall St. J., Jan. 3, 1968, at 3, col. 3.

39. Wall St. J., Jan. 26, 1968, at 26, col. 2.

40. N.Y. Times, Jan. 21, 1967, at 39, col. 1.

41. The SEC has the power to regulate brokerage commissions. Securities Exchange Act of 1934 § 19b, 15 U.S.C. § 78s(b)(9) (1964). If these practices developed, it would seem likely that the SEC would exercise these powers.

ulatory requirements.[42] However, this argument appears rather tenuous when one considers that such a high percentage of the commissions on large transactions is now voluntarily given away. The SEC has been able to successfully attack the arguments presented in favor of keeping the present commission schedule and has convinced the NYSE that a volume discount would, in the long run, be in its best interests.

The 1968 SEC Hearings into the Minimum Commission System have inevitably gone beyond give-ups and volume discounts and have brought into question the entire subject of fixed rates. The setting of rates under the minimum commission structure clearly constitutes price fixing.[43] Unless the Securities Exchange Act of 1934 confers some immunity on the NYSE the minimum commission would be illegal per se, even if reasonable.[44] Although the minimum commission has always been set by the exchanges, the Act in effect grants the SEC power to order the exchanges to alter their rules regarding reasonable commissions if it is "necessary or appropriate for the protection of investors or to insure fair dealing in securities traded in upon such exchange or to insure fair administration of such exchange . . . ."[45] It does not expressly provide that exchanges shall be immune from antitrust legislation.

III. Antitrust and the Minimum Commission

The issue of antitrust immunity was presented to the courts in *Silver v. New York Stock Exchange*,[46] which was essentially a boycott case rather than one concerned with minimum commission rates. In that case, the plaintiff sued for damages as a result of the NYSE's instruction to member firms to discontinue wire service with Silver, a non-member dealer in over-the-counter securities. The court of appeals held the NYSE immune from antitrust liability because the exchange acted pursuant to the Securities Exchange Act of 1934.[47] The court stated that, according to the scheme of the Act, the securities industry was to be regulated by the SEC and the exchanges, "with the Commission exercising general supervisory power over the exchanges' self-regulation."[48] Furthermore, since the Act provided for self-regulation of the exchanges, under the control of the SEC, this self-regulation would be threatened if the exchange were held liable under the antitrust laws. The court found that the exchanges, if held liable, would "be reluctant to fulfill their obligations under the Securities Exchange Act."[49]

The Supreme Court reversed, stating that "the Exchange has plainly exceeded

42. Supra note 40.
43. 26 Stat. 209 (1890), as amended 15 U.S.C. § 1 (1964).
44. Id. See United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 223 (1940).
45. Securities Exchange Act of 1934, § 19(b), 15 U.S.C. § 78s(b) (1964).
46. 373 U.S. 341 (1963), rev'g 302 F.2d 714 (2d Cir. 1962), aff'g on other grounds, 196 F. Supp. 209 (S.D.N.Y. 1961).
47. 302 F.2d at 715.
48. Id. at 716.
49. Id. at 721.

the scope of its authority under the Securities Exchange Act to engage in self-regulation"[50] since it neither gave notice to the plaintiff nor allowed him a hearing. On the issue of antitrust liability, the Court held that exchanges were not expressly immune from antitrust laws and that an exemption is implied only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary.[51] *Silver* established that exchange activity, such as fixing minimum fees, which otherwise would be a per se violation of the Sherman Act, is to be measured by the reasonableness standard.[52] Exchanges are exempt from antitrust liability if they act reasonably to carry out the objectives of the Act.[53]

Since the *Silver* decision, there has been one case applying the reasoning of the Supreme Court to the problem of reconciling the minimum commission system employed by the exchanges with the antitrust laws and the Securities Exchange Act of 1934.[54] In this case, plaintiffs attacked the commission system as a per se violation of the Sherman Act.[55] The district court, relying on *Silver*, held that if the commission system were within the 1934 Act, it could not be a per se violation. After examining the 1934 Act and the history of the minimum commission system, Judge Hoffman found it clear that this system did fall within the Act. The court of appeals affirmed and the Supreme Court denied certiorari with Chief Justice Warren dissenting.

Three arguments have been advanced for exempting exchanges from antitrust laws. First, the exchanges would be burdened by lengthy antitrust suits and their activities impaired while the suits were pending.[56] Second, the regulation of exchanges is a specialized field and courts should not take jurisdiction over exchange regulations since the SEC has extensive knowledge of these problems.[57] Finally, the policy of exchange self-regulation, provided by the Securities Exchange Act, would be defeated.[58] On the other hand, it is suggested that exchanges should be held liable under antitrust laws because Congress has never expressly granted immunity[59] to them. It is argued that the Securities Exchange Act expressly immunizes associations of over-the-counter dealers and that if the exchanges were to be exempt from the application of antitrust laws, such exemption would have been expressly stated.[60] It is also suggested that antitrust liability should be imposed because price fixing is contrary to the idea

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50. 373 U.S. at 365.

51. Id. at 361.

52. Comment, Antitrust and the Stock Exchange: Minimum Commission or Free Competition?, 18 Stan. L. Rev. 213, 228 (1965).

53. Id.

54. Kaplan v. Lehman Bros., 250 F. Supp. 562 (N.D. Ill. 1966), aff'd, 371 F.2d 409 (7th Cir.), cert. denied, 389 U.S. 954 (1967), rehearing denied, 390 U.S. 912 (1968).

55. 15 U.S.C. § 1 (1964).

56. Comment, supra note 52, at 232.

57. Id.

58. Id. at 233.

59. Id.

60. 10 U.C.L.A.L. Rev. 923, 924 (1963).

of free enterprise and because the fixed commission structure, in light of the practices examined previously, does not guarantee "minimum" fees paid to member brokers.[61]

IV. The Department of Justice

The Department of Justice, which is responsible for enforcing antitrust laws, supports, to a large extent, the position that antitrust liability should be imposed. The Department has submitted a brief[62] to the SEC on the issue of the necessity of a fixed rate to implement the Securities Exchange Act. Its brief indicates that the present commission system may be against the public interest which, the Department feels, is twofold; first, to be protected from high commission rates, and second, to maintain an efficient auction market.[63]

The Department also contends that abolition of the present commission system will increase the efficiency of the market by bringing many transactions that are presently executed off the New York Exchange back to its floor. Under the present system, members often deal elsewhere because of the high commission required by the New York Exchange. It is contended that if all commissions were negotiated, this incentive to go elsewhere would disappear. The Department further contends that the danger of destructive pricing, the major reason that minimum rates are permitted in any field, does not exist in this area since there are not large fixed costs.

While the Justice Department's brief argues that once the minimum commission is abolished, the very size of the New York Stock Exchange will cause transactions on it to increase,[64] the Exchange feels that just the opposite will happen. In their view, the minimum commission is a major factor in encouraging brokers to join the exchange. If it were eliminated, the exchange believes these brokers would find it more profitable to cross trades in their offices or deal in the third market where there is no floor brokerage fee.[65] When it was to their advantage, these brokers could use the New York Exchange by negotiating with floor brokers. If this did happen, the results would be dangerous. The liquidity of the market would decrease, as would disclosure of prices. This would result in haphazard price making. It also raises the possibility that an unscrupulous broker could easily cheat a customer. Moreover, the market's ability to handle volume and to minimize short run price fluctuations would be reduced, and the quality of execution and services would be threatened.

61. Comment, supra note 52, at 234.

62. 198 CCH Fed. Sec. L. Rep. 16 (extra edition, May 3, 1968).

63. The Justice Department submitted a second memorandum on the subject on January 17, 1969 which outlined a plan that the Department believed was workable. The minimum commission would immediately end on sales amounting to $50,000 or more and this ceiling would decrease by $10,000 a year. If necessary to protect the small investor a maximum commission would be established. N.Y. Times, Jan. 23, 1969, at 65, col. 1.

64. There will no longer be a reason to use the regional exchanges to escape the excessive commissions demanded by the New York Exchange.

65. New York Stock Exchange, Economic Effects of Negotiated Commission Rates on the Brokerage Industry, the Market for Corporate Securities, and the Investing Public 23 (Aug. 1968).

The exchanges likewise dispute the Justice Department's belief that negotiated commissions will protect the investor from high commission rates. They contend that there would be price discrimination with the heaviest burden falling on the small investor. They also say that, after an initial highly competitive period during which many small firms will be driven out of business, the remaining firms might very well set informal commission minimums.[66]

V. Conclusion

If the stock exchange is right in its belief that the abolition of the minimum commission would result in a drastic decrease in trade on the exchange, then the danger of the move greatly outweighs any possible benefit that might come out of it. It is essential to maintain an efficient market with the maximum possible liquidity and depth. However, the danger that New York Stock Exchange transactions will substantially decrease if the minimum commission is ended may have been overestimated by the exchange. Most large transactions would still take place on the New York Exchange since that is the most likely place to find enough buyers. Many small transactions would also continue to take place on the New York Exchange because, except in the instance where the broker happens to know of someone willing to buy, it would be more convenient.

If the stock exchange has overestimated the danger of abolishing the minimum commission system, has the Justice Department embellished the beneficial results of such a move? It points out that the last two increases of the minimum commission rate were opposed by a substantial number of members of the exchange.[67] Presumably, at least these brokers would charge lower rates if given the opportunity. However, while there is convincing evidence that the present rates are too high when applied to large transactions, the same has not been shown to be true of smaller transactions. The institution of volume discounts appears to be a rational way of dealing with the situation and it avoids the dangers that the New York Exchange fears might arise if the minimum commission system were abandoned altogether. Volume discounts, in view of the possibility, however slight, of disastrous results if a more radical step were taken, appear to be the most sensible means to correct the inequities of the system. It should be given an opportunity.

66. Wall St. J., April 30, 1968, at 34, col. 5-6.

67. Supra note 62, at 23.