

October 16, 1972

To Our Clients

Market Structure

The Antitrust Division of the Department of Justice has submitted strong and highly critical comments on the SEC's proposed rule 19b-2. The Antitrust Division attacks the retention of fixed commissions at any level, the basis for excepting pension and family business, the logic and desirability of the 80/20 approach, the statutory power of the SEC to adopt the proposed rule and the nonevidentiary proceedings approach the SEC is following.

In mounting its attack on the NYSE-SEC position, as reflected in proposed rule 19b-2, the Antitrust Division argues that if there is a conflict between money management and brokerage, it should be barred in all aspects of business, including retail brokerage, and that the logic supporting the SEC's present justification of proposed rule 19b-2 mandates the inclusion within "affiliated" business of pension funds, family and firm accounts and private individual discretionary accounts. Like the House and Senate Subcommittees, the Antitrust Division thinks that the 80/20 rule would encourage churning of "public" accounts -- to increase the base on which to determine the permissible amount of "affiliated" business -- and acquisitions of "public" brokers by institutions.

If accepted, the position of the Antitrust Division would result in fully negotiated commissions for all orders no matter what the size, unlimited institutional membership, complete separation of money management and brokerage (except that the Antitrust Division would apparently accept the combination when the brokerage is done without charge) and, perhaps, separation of the broker-dealer functions. As we have pointed out before, the ill-conceived attempts of the NYSE to preserve fixed commissions and bar institutional membership are not only failing of their purpose, but are leading to attacks on the basic structure of the entire brokerage industry -- not just the few brokerage firms that are heavily into money management. While the hope is indeed forlorn, there is still time for the NYSE and the industry to regain control of their destiny by abandoning fixed commissions and the restrictions on institutional membership.

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