

BY SPECIAL MESSENGER

Honorable Phillip S. Hughes  
Assistant Director for  
Legislative Reference  
Bureau of the Budget  
Washington 25, D. C.

Re: S. 2135, 87th Congress

Dear Mr. Hughes:

A member of the staff of the Senate Banking and Currency Committee recently supplied us with a copy of a letter dated August 1, 1961, which was written on behalf of the New York Stock Exchange to Senator Harrison A. Williams, Jr., as Chairman of the Subcommittee on Securities, and requested our comments thereon. A copy of that letter is enclosed herewith.

You will note that the Exchange takes the position that it would have no objection to S. 2135 with the modifications suggested in our comments to the Senate Committee provided that a further modification be added to grant a mandatory review of any action taken at a delegated level under Sections 15(b), 19(a) and 19(b) of the Securities Exchange Act of 1934.

Aside from the fact that "any action" should read "any final action" in order to avoid mandatory reviews at initial and interlocutory stages, we are reluctant to accept the modification requested by the Exchange because it deals only with delegated agency actions under portions of the 1934 Act which are of particular concern to stock exchanges and the members thereof. Issuers, underwriters, broker-dealers and others would be equally affected by delegated action under other sections of the 1934 Act, and, indeed, under all of the other acts which we administer. We feel that if mandatory review is to be regarded as essential on final actions which seriously affect stock exchanges and their members, final actions which have like effect on others should be regarded as equally essential.

When we first drafted our proposed comments on S. 2135 we included a proposal to add to Section 1(b) a proviso which would have given a mandatory right of review to all parties adversely affected by any final delegated action "in any case required by statute to be determined on the record after opportunity for hearing". It is our belief that such a provision would give the very relief which the New York Stock Exchange now seeks in the areas in which it is involved and would at the same time give equal relief in other areas which involve other segments of the securities industry.

We dropped the above suggestion in the final version of our comments to the Senate Committee after consultation with Dean Landis and others at the Bureau of the Budget in which it was agreed that review of final delegated actions in on the record proceedings upon the request of one Commissioner would as a practical matter afford sufficient protection to parties adversely affected by such actions and that mandatory review was therefore unnecessary.

We are of the opinion that either our original proposal should be revived so as to afford equal right of review to all parties who are adversely affected by final action at a delegated level, or that the New York Stock Exchange proposal should be opposed so that no one would have the right of review except upon the vote of at least one Commissioner.

Since this is a matter on which our original position was reached as a result of a conference at the Bureau of the Budget, we would like to confer further with you before commenting to the Senate Committee on the New York Stock Exchange proposal. Since the Committee is pressing us for an immediate answer, we would like to confer with you without delay.

In view of his participation in our earlier conference at the Bureau of the Budget, I am sending a copy of this letter to Dean Landis.

Sincerely yours,

William L. Cary  
Chairman

Encl.

cc: Honorable James M. Landis

WPNorth/kb