

Washington, D. C.

December 12, 1942

Mr. Ganson Purcell, Chairman  
Securities & Exchange Commission  
Philadelphia, Pennsylvania

Dear Mr. Purcell:

With further reference to our correspondence concerning the Commission's proposed Rule X-15C1-10, I have given a great deal of study to your letter to me, and I am taking the liberty to respond further in order that you might have my viewpoint on your analysis of the subject.

It appears that your justification of the rule is based upon two grounds: first, under the authority conferred by Section 15(c)1 of Securities & Exchange Act of 1934 and, second, under the provisions of Sections 10(b) and 23 (a) of that Act.

It seems to me that you have assumed that the proposed rule is merely a definition of devices or contrivances which are manipulative, deceptive, or otherwise fraudulent. Undoubtedly, the Commission has the power to define such devices or contrivances, but the proposed rule, under the guise of a definition, is, in my judgment, clearly an attempt to regulate, by defining every transaction, however legitimate, as a fraudulent device or contrivance, except a transaction made in conformity with the rule.

If there is any conflict between Section 15(c)1 and the Section of the Act originally enacted, it is elementary that the latest expression of Congressional intent must govern. Section 15 (c)1 was a re-enacted verbatim section in 1938 taken from the Act of 1934 and that section is undoubtedly inconsistent with Section 10(b), and this Section 10(b) of the old Act we reenacted as Section 15(c)2 of the Act of 1938, but we deliberately excluded exempted securities from the operation of the Section. Furthermore, Section 10(b) applies to all persons, but in Section 15 (c) the legislation was with respect to the activities of a particular class of persons, to wit, brokers and dealers, and it appears elementary to me that particular legislation supersedes general legislation in conflict with it. So to the extent that there is conflict between Section 10(b) and 15(c), 15(c) undoubtedly supersedes the other Section, otherwise the Congress went through an idle ceremony in enacting 15(c) at all.

House of Representatives

Washington, D. C.

Mr. Ganston Purcell

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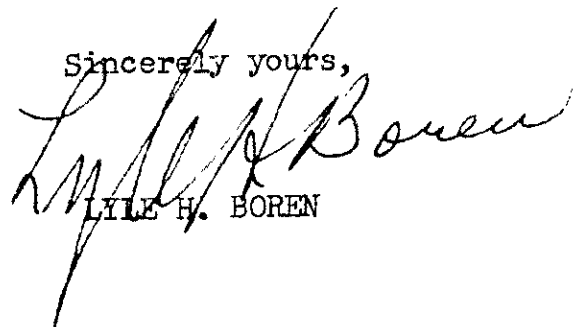
It appears that you interpret Section 23(a) to vest in the Commission blanket power to make such regulations as it sees fit, and to classify securities, whether or not declared by Congress to be exempted securities, in the discretion of the Commission. I am sure the Section has no such intent. The powers conferred by this Section are subject to all of the limitations to be found in the Act.

Of course, your reference to Section 17 of the Securities Act does not relate to our difference of opinion. No one contends that dealers in State and Municipal securities are not subject to penalties for fraudulent transactions. Congress quite properly made all fraudulent transactions illegal.

Of course, if the interpretations which you make of the Sections referred to above are to be carried out in rules such as the one proposed, then Congress should and I believe will correct Section 23(a) to make it clear that this Section does not confer a blanket power either upon the Commission or the Board of Governors of the Federal Reserve System, and also correct the conflict between Section 15(c) and Section 10(b). Of course, if you were to accept my interpretation of the three sections referred to, there would be nothing to correct, because the one is cared for in what I conceive to be the clear intent of Congress and the other by supersedence, that is, 15(c) superseding 10(b).

It is my own considered judgment after a careful study of the whole problem, including your response to my earlier letter, that the proposed rule is not authorized under the powers of the Commission defined by what I conceive to be the clear intent of Congress.

Sincerely yours,



LYLE H. BOREN

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