SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

December 4, 1975

Mr. James J. Needham
Chairman and Chief Executive Officer
New York Stock Exchange, Inc.
Eleven Wall Street
New York, New York 10005

Dear Mr. Needham:

Thank you for your letter of November 13, 1975, concerning foreign owned or affiliated exchange members. I very much regret the incorrect impression you may have received from a recent article in the Wall Street Letter that the press of other business would keep us away from this important topic.

The dialogue between the Commission and the New York Stock Exchange, which you summarized in your letter, indicates that we have given serious consideration to the issues involved, and you may be assured we will continue to do so. In that connection, I want to renew the invitation extended to you at our meeting on November 4th for the Exchange to submit additional materials, or specific rule proposals, that respond to your concerns. We do not consider it appropriate, at this time, to initiate further action, which would address the concerns you have raised, absent a specific rule proposal or a specific fact situation, such as Commission review of NYSE action on a membership application.

As we discussed at our meeting on November 4th, the Securities Acts Amendments of 1975 have changed, and refocused, the context within which we can consider the questions which were raised in the Commission's original "foreign access" release as well as the response submitted by the NYSE. As we also discussed, the Commission's staff is of the view that, under Section 6 of the Securities Exchange Act, as amended, an exchange may not deny membership to a registered broker-dealer solely because it is owned or controlled by foreign persons. I should also point out that, while the Commission does not now perceive a basis for disagreeing with the staff's position, we obviously would consider carefully your position in any specific proceeding before us.

Nevertheless, exchanges may have rules to implement the provisions of Section 6(c)(3)(C) of the Act, with respect to obtaining information from, and providing for examinations of, persons associated with exchange members. In addition, the Commission, of course, has substantial authority under new Section 11(a) of the Act to regulate or prohibit transactions by members or classes of members (and in certain cases non-members) or to exempt transactions or classes of transactions from the prohibitions of Section 11(a)(1).

While those sections would not appear to permit the Commission to acquiesce in a denial of membership to a foreign controlled or affiliated registered broker-dealer, they do provide exchanges, subject to Commission review under Section 19(b), and the Commission directly, with broad discretionary authority to regulate, in furtherance of the purposes of the Act, the utilization of foreign controlled or affiliated members. In addition, we are not unmindful that Congress has directed the Commission to consider the securities-related activities of persons which are currently excluded from the definitions of broker and dealer in the Act, including banks, and that our consideration of these matters, as well as related questions for foreign banks and their affiliates, may impact on questions you have raised.

We also are sympathetic to the elements of equity in your argument that we should not grant unrestricted access to our securities markets while the access of American firms to foreign securities markets is restricted. As you know, that was once a position espoused by the Commission. But, there has, since the Commission's 1972 statement, been a Congressional expression, in the 1975 Amendments, supportive of the United States taking the lead in fostering a more open climate for international financing by permitting access by foreign firms to our markets without attaching prior conditions, such as reciprocal privileges for American firms. Thus, as we discussed at our meeting on November 4th, the Commission's staff believes that your suggestions for a mutual non-discrimination policy would now be more appropriately handled through legislation in which, because of the substantial policy implications involved, the Departments of State and Treasury would have primary interests.

Although your views and those of our staff appear to differ, it seems more appropriate to us at this time to resolve those differences, if necessary, in the context of a specific proceeding. Nevertheless, the dialogue which has developed has served to put into focus these important issues.

Sincerely,

Roderick M. Hills

Roderick M. Hills
Chairman