



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 24 1994

Kevin J. Arquit, Esq.
Steven A. Newborn, Esq.
Rogers & Wells
607 14th Street N.W.
Washington, D.C. 20005-2011

Dear Messrs Arquit and Newborn:

This letter responds to your request for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its antitrust enforcement intentions with respect to a proposed study of and report on the types of broker compensation methods that reduce real and perceived conflicts of interest between securities brokers and their customers by your client, the Compensation Practices Committee (the "Committee").

The Committee was established at the behest of the Chairman of the Securities and Exchange Commission in order to ascertain and disseminate information throughout the securities industry about the best broker compensation practices that can be utilized by individual brokerage firms to eliminate or reduce conflicts of interest between brokers and their investor/customers. The purpose of the contemplated study and report is asserted as the need to address concerns that the financial incentives of a broker to generate transactions resulting in sales commissions may be perceived as diverging from an investor's financial interests. The Committee is made up of six members: the Chairmen of Merrill Lynch, Legg Mason, Berkshire-Hathaway, and General Electric, Professor Hayes of Harvard Business School, and an investor advocate, Thomas O'Hara, Chairman of the National Assn. of Investors Corp. After soliciting the views of all segments of the securities industry and other knowledgeable persons, the Committee will issue a report identifying broker compensation practices that may raise real or perceived conflicts of interest and the "best practices" that are being or could be used to eliminate or reduce such conflicts. The Committee hopes that the publication of its report will provide information that will result in the more wide-spread utilization of such "best

practices." You have assured us, however, that there is no agreement among any segment of the brokerage industry to adopt the report's recommendations; on the contrary, you assert that any decision by brokerage firms to alter their broker compensation practices will be made on a voluntary and unilateral basis.

The Committee has adopted operating rules designed to provide assurance that its operation does not produce any anticompetitive effects. An agenda will be prepared for each Committee meeting, and it will be reviewed by antitrust counsel prior to the meeting. There will be no discussions at meetings beyond the scope of the reviewed agenda and the Committee will limit its discussions at all times to the goal of identifying broker compensation practices that raise conflicts of interest and how best to eliminate or reduce such conflicts. The subject of compensation levels for broker commissions or fees charged to customers is beyond the scope of the Committee's goals and responsibility and will not be discussed at any meeting or hearing, or in the published report.

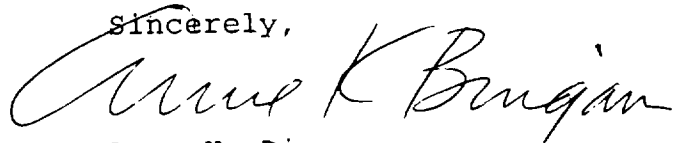
After careful consideration of the information and assurances that you have provided, the Department of Justice has concluded that it has no present intention of challenging under the antitrust laws the formation of the Compensation Practices Committee or its operations to the extent that they are carried out in the manner described herein. The proposed conduct does not appear to raise risks to competition, or constitute an illegal agreement under the antitrust laws. The Committee's work will be strictly limited to the subject of identifying potential conflicts of interest and disseminating information in its report on how such conflicts can be eliminated or reduced. Any implementation of its recommendations by brokerage firms will be on a unilateral, voluntary basis.

Any reduction in the utilization of broker compensation practices that raise real or perceived conflicts of interest between brokers and their customers could have a procompetitive effect. Customer concerns about the integrity of the system of buying and selling securities can deter customer utilization of the system. To the extent that changes in compensation practices reduce such customer concerns, customers are more likely to utilize the system and create fuller or more liquid markets. Greater customer utilization of our securities market would be procompetitive in that it would reflect increased output in the relevant markets. Moreover, it is possible that the Committee's report will cause industry members to compete with one another through publicizing their adoption of broker compensation practices better aligned with customer interests. Such a procompetitive result would foster the goals of our securities laws as well as the antitrust laws.

This letter only expresses the Department's current enforcement intention, and is based on the information and assurances that you have provided. In accordance with our normal practices, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if actual operation of any aspect of the proposed conduct proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made available to the public within 30 days of the date of this letter unless you request that part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

A handwritten signature in cursive script, reading "Anne K. Bingaman". The signature is written in dark ink and is positioned above the typed name and title.

Anne K. Bingaman
Assistant Attorney General