

Securities and Exchanges

FREEDOM OF INFORMATION—

Freedom of Information Act requires Securities and Exchange Commission to release, with material identifying sources deleted, transcripts and documents received in investigation of New York Stock Exchange Rule 394, which governs off-board trading by members.

This suit is brought under the public information section of the Administrative Procedure Act, 5 U.S.C. § 552, popularly known as the Freedom of Information Act, by M. A. Schapiro & Co., Inc., an underwriter and broker-dealer in bank securities. It is suing for an order and judgment enjoining the SEC from withholding, and ordering it to produce, the SEC's staff study, and supporting documents, on the off-board trading problems raised by the NYSE's Rule 394, which requires members to obtain exchange permission before effecting a transaction in a listed stock off the exchange.

The SEC contends that the information requested should not be disclosed in that it is exempt, having been gathered in the course of an investigation compiling facts relating to the enforcement of laws.

The purpose of the Freedom of Information Act "is to increase citizens' access to government records. It was not intended that in the process of closing loopholes in the requirement that the public not be denied legitimate information, that new loopholes were created." In *Bristol-Myers Co. v. FTC*, 424 F.2d (CA-DC), it was held that specific exemptions of records from disclosure pursuant to the Freedom of Information Act were to be narrowly construed. To exempt material from disclosure, the court must examine each document and explain the specific statutory justification for withholding the particular item. Upon inspection of the documents, it is the conclusion of this court that all the requested documents must be made available to the plaintiff.

First, these documents are not specifically exempted from disclosure by any statute. The provision for documents specifically exempted from disclosure by statute relates to "those other laws that restrict public access to specific Government records. It does not, as defendants allege, relate to a statute that generally prohibits all disclosures of confidential information."

Second, the documents are not inter-agency or intra-agency memoranda or letters, and thus, are not encompassed by this exception. None of the documents expressed "an exchange of ideas between agencies or their respective staff members," and there is no

W 2600

Administrative policy-making process exhibited.

Third, although arguably the documents are investigatory files compiled for law enforcement purposes, the SEC has not proffered any facts that would show it contemplated within the reasonably near future a law enforcement proceeding based upon the materials sought.

Fourth, these documents arguably do not concern financial institutions, which are defined by the SEC as banks, trust companies, investment bankers, or banking associations. This definition does not include national securities exchanges or broker-dealers. The possibility, however, that the integrity of any broker or exchange may be harmed is remedied by the deletion of all identifying material.

Fifth, these items do not fall within the exemption for "trade secrets" and commercial or financial information obtained from a person and privileged or confidential. Upon examining the documents, one may "candidly" state that their sole concern was the practice and procedure for off-board trading. None of the information given could objectively be said to be of the type that one would mind revealing to the public. Neither the SEC, nor any of the individuals who testified has expressed to this court any rational reason why these items should not be made public other than "a bare claim of confidentiality." Most of those who gave information to the SEC were genuinely concerned with keeping the activities of brokers and exchanges in a "fishbowl" for the public to view. Thus, the action of this court is consistent with their genuine desires.

None of the material may be withheld from plaintiff. All identifying material that would indicate who the individual giving the information was, however, shall be deleted where the person so requests.—Robinson, J.

—USDC DistCol; M. A. Schapiro & Co., Inc. v. SEC, 2/28/72.