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The SEC Ruling Forbidding Quantity Discounts on Group Purchases From Mutual Investment Companies

This Note considers SEC Rule N-22D-1 forbidding "quantity discounts" to groups purchasing mutual investment company shares for their members. After analyzing the rule in reference to the statutory objectives it is designed to promote, the author concludes that it can be justified, although it does not promote all of the objectives relied upon to support it and is somewhat inconsistent in application.

The SEC recently adopted Rule N-22D-1 interpreting section 22(d) of the Investment Company Act of 1940, and granting certain exemptions from that section as authorized by section 6(c). One effect of the rule is that quantity discounts may no longer be granted to investment groups purchasing securities from open-end mutual investment companies. Since the rule destroys the prime economic reason for the existence of investment groups, they will probably disband. Consequently, the reasons advanced by the SEC for adoption of Rule N-22D-1, and possible difficulties in its application, warrant careful consideration.

Open-end mutual investment companies are those in which the shareholder may at any time present his certificates of stock for

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redemption at net asset value.\textsuperscript{5} The early growth of the open-end companies was accompanied by the development of questionable sales tactics in response to severe competition.\textsuperscript{6} Thus, it became practically impossible for one company, or a small group of companies, to raise the ethical standards of selling.\textsuperscript{7}

Partly as a result of this competitive situation, Congress began an exhaustive examination of the mutual investment company industry in 1935.\textsuperscript{8} The outcome was the enactment of the Investment Company Act of 1940,\textsuperscript{9} which was addressed in two ways to the problem of unfair sales tactics. Section 22(d) required all sales of redeemable securities to “any person” by the issuing company, its principal underwriter, or dealers to be “at a current public offering price described in the prospectus.”\textsuperscript{10} Further, the act established certain standards of disclosure designed to make available to all members of the investing public “adequate, accurate, and explicit information fairly presented concerning the character of such securities and the circumstances, policies, and financial responsibilities of such companies and their management.”\textsuperscript{11}

But it remained for the SEC to interpret the act, and that agency construed “current public offering price” to permit the common practice among open-end companies of granting graduated reductions in sales loads, depending on the amount of the purchase. The computation of the amount of purchase was approved either on the basis of (1) a single purchase,\textsuperscript{12} or (2) the aggregate acquisi-

\textsuperscript{5} With specified exceptions, redemptions must be made within seven days after tender of the security to the investment company. Investment Company Act of 1940 § 22(e), 54 Stat. 824, 15 U.S.C. § 80a-22(e) (1952).
\textsuperscript{7} Id. at 330.
\textsuperscript{8} See Stevenson, Investment Company Shares, 84 Trusts & Estates 416, 422–23 (1947).
\textsuperscript{12} SEC Investment Co. Act Release No. 89, March 14, 1941. To illustrate, in a purchase of less than $15,000 of shares in Investors Selective Fund, Inc., the sales charge is 6½%; but purchases of $1,000,000 and over carry a sales charge of only 1½%. Investors Selective Fund, Inc., Prospectus 12, Feb. 18, 1939. The sales charge is based on a percentage of the public offering price. Thus, on a purchase of $14,000, the sales charge is $920; while on a purchase of $1,000,000, the sales charge is $15,000.
tion value of shares previously purchased and then owned, plus shares then being purchased.\textsuperscript{13}

Perhaps to capitalize on this availability of “quantity discounts,” some individual investors formed investment “groups,” thereby pooling their funds and purchasing open-end shares at discounts which their personal resources would never enable them to obtain.\textsuperscript{14}

Through group purchase plans, retirement security programs are conducted with only a nominal portion of the investment “wasted” on sales loads.\textsuperscript{15} A typical investment group operates as follows: individual members regularly contribute to a “custodian” or “trustee,” which invests the contributions in its name in open-end shares in lump-sum transactions;\textsuperscript{16} the investment companies then invest the total contributions, less sales loads, in the stocks and bonds of widely diverse enterprises.\textsuperscript{17} Among the prominent investment groups are one formed by physicians, one by dentists, and another by college faculty members.\textsuperscript{18} The SEC approved the granting of quantity discounts to these groups.\textsuperscript{19}

\begin{table}[h]
\begin{tabular}{|c|c|}
\hline
Amount Invested & Sales Charge \\
\hline
To $15,000 & \text{6\%} \\
$15-20,000 & \text{6\%} \\
$20-25,000 & \text{5\%} \\
$25-30,000 & \text{5\%} \\
$30-50,000 & \text{4\%} \\
$50-100,000 & \text{4\%} \\
$100-200,000 & \text{3\%} \\
$200-400,000 & \text{3\%} \\
$400-700,000 & \text{2\%} \\
$700,000-1,000,000 & \text{2\%} \\
$1,000,000 and over & \text{1\%} \\
\hline
\end{tabular}
\end{table}

\textsuperscript{13} SEC Investment Co. Act Releases Nos. 1429, Feb. 24, 1950, and 1434, March 13, 1950. For example, if an investor had previously purchased and still owned shares in Investors Selective Fund, Inc., for which he paid $10,000, and made a subsequent purchase of shares for $6,000, the sales charge applicable to this latter purchase would be 6\%, the charge for sales between $15,000 and $20,000, and not 63/4\%.

\textsuperscript{14} To be distinguished from the investment groups here involved are investment “clubs,” which typically invest directly in the general securities market.

\textsuperscript{15} In Investors Selective Fund, Inc., for example, the percentage relationship of amount invested to sales charge is as follows:

\textsuperscript{16} For example, the University of Minnesota faculty group deposits its members’ contributions with the Marquette National Bank of Minneapolis, which in turn (1) invests the deposit monthly in its own name, and (2) maintains “trustee” accounts for each member of the group.

\textsuperscript{17} E.g., Investors Selective Fund, Inc., Prospectus 1, Feb. 18, 1950.

\textsuperscript{18} The physicians’ and dentists’ groups are in Los Angeles; the faculty group is at the University of Minnesota. 1,200 doctors and 500 dentists are members of the two Los Angeles groups, and have invested more than $4,000,000 in open-end shares. SEC, REPORT IN THE MATTER OF RULE N-22D-1 OF THE INVESTMENT COMPANY ACT OF 1940, at 97-98 (1958).

\textsuperscript{19} See Letter From SEC to the University of Minnesota Faculty Group, July 30, 1954, on file in office of Professor John C. Kidney.
Recently, however, the SEC concluded that allowing quantity discounts to investment groups was undesirable, because (1) some members of investment groups do not receive prospectuses of the open-end companies in which their funds are invested, thereby thwarting the disclosure requirements of both the Investment Company Act of 1940 and the Securities Act of 1933; and (2) the practice involves discrimination contrary to the intent of section 22(d), since reduced prices are not being granted to single members of the public, but to numerous individuals comprising selected "classes" of persons.

Consequently, on May 28, 1958, the SEC published notice that it was considering the adoption of Rule N-22D-1. On December 2, 1958, after a consideration of oral arguments and written memoranda presented by interested parties, the rule was promulgated in the form in which it became effective on March 20, 1959.

Rule N-22D-1 codifies most of the SEC's interpretations of section 22(d) and the exemptions from that provision granted under section 6(c). Included is a codification of those interpretations granting graduated reductions in sales charge to "any person" on a quantity discount basis. However, the rule disallows the granting of discounts to investment groups, defining the term "any person" to exclude "a group of individuals whose funds are combined directly or indirectly, for the purchase of redeemable securities," as

20. 48 Stat. 74, 15 U.S.C. § 77a (1952). Section 2(30) of the Investment Company Act of 1940 provides that, for purposes of § 22, the word "prospectus" means a written prospectus intended to meet the requirements of § 77j(a) of the Securities Act of 1933; otherwise that the Securities Act's definition is applicable. 54 Stat. 794, 15 U.S.C. § 80a-2(30) (Supp. V, 1958). Section 2(10) of the Securities Act of 1933 defines "prospectus" as any communication offering securities for sale, but provides that any communication in respect to a security shall not be deemed a prospectus if it meets certain restrictions and states from whom a written prospectus meeting the requirements of § 77j may be obtained. 48 Stat. 75, 15 U.S.C. § 77b (10) (Supp. V, 1958). Section 77j(a) of the Securities Act of 1933 requires that, with specified exceptions, all prospectuses must contain the facts revealed by the issuing company in its registration statement to the SEC, and such other information as the SEC designates. 48 Stat. 81, 15 U.S.C. § 77j(a) (Supp. V, 1958).

21. SEC Investment Co. Act Release No. 2718, May 28, 1958. The SEC also noted that, since the granting of discounts to investment groups is discriminatory, and since group formation is often encouraged by open-end companies, their underwriters, and distributors, the latter are engaging in discriminatory pricing policies contrary to § 22(d). Ibid.

22. Ibid.


well as "a trustee, agent, custodian, or other representative of such a group of individuals." 27

The desirability of the rule can be appraised by analyzing the reasons advanced for its adoption.

(1) The disclosure requirements of the acts of 1933 and 1940 are being thwarted. The purpose behind the disclosure requirements of the 1933 and 1940 acts is to assure that companies issuing securities make accurate information available to the investing public so that an investor has sufficient data to make enlightened investment choices. 28 Furthermore, as a condition precedent to the investment of funds in at least one of the prominent investment groups—the college faculty group—members are required to submit written acknowledgment of receipt of a prospectus of the open-end company in which their funds will be invested. 29 Perhaps the other groups have similar conditions to membership. If so, the opportunity for investor enlightenment is probably present, and the disclosure requirements are being satisfied.

However, it is conceivable that there are investment groups in which leadership is, by oversight, indifference, or exploitation, less conscientious in seeing that all members have access to prospectuses. Many of the members of such groups might blindly contribute to a "good deal," oblivious to any possible peril in the investment, or to the existence of prospectuses which might apprise them of that peril. Although it might be argued that most of those members could not interpret a prospectus to advantage anyway, the statutes are designed to provide the opportunity to secure this information, and it is this opportunity which may be lacking. Apparently, the disclosure purpose of the rule is primarily directed at this latter type of group, or at least in anticipation of the development of such groups. 30

However, since the companies were unanimous in their support of the rule, 31 the suspicion is irresistible that it was promulgated at their instigation to increase profit margins on sales; that the regulated dictated to the regulating agency. 32 Superficially, at least, other

27. Ibid.
29. Interview With Members of University of Minnesota Faculty Group, April 30, 1959.
30. It is also probable that investment groups other than those mentioned previously (see note 18 supra) were being organized at the solicitation of investment company sales representatives.
32. "[A] commission finds its survival as a regulatory agency dependent heavily on its facility in reaching a modus operandi with the regulated groups." Bernsstein, Regulating Business by Independent Commission 155 (1955). For a general discussion of the control of regulators by the regulated, see 1 Davis, Administrative Law § 1.03, at 18–24 (1958).
circumstances do little to abate this suspicion. For instance, it might be argued that if the SEC is interested in upholding disclosure requirements on behalf of members of investment groups, it is strange that it has indicated no similar interest on behalf of members of the many variations of investment clubs, which do not invest in open-end shares, but in the general securities market. Furthermore, the rule continues to allow discounts, *inter alia*, to employee benefit plans qualifying under section 401 of the Internal Revenue Code, to organizations described in sections 501(c)(3) and (13) of the code, and to certain family units. It might be argued that the disclosure requirements are no less satisfied in regard to members of investment groups than to members of these preferred groups.

But most of these doubts about the real purpose of the rule can be dispelled. In the first place, it is doubtful that lust for greater profit margins was a moving force behind the open-end companies' support of the rule. To the extent that quantity discounts reflect decreased expenses to the companies handling large purchases, any increased revenue realized from selling at nondiscounted prices in accordance with the rule would be consumed by the increased expense of selling and handling the smaller sales to the individuals formerly comprising the groups. Even more convincing, the companies must have realized that, deprived of discounts, the former group members would probably invest their smaller sums elsewhere than in open-end shares, and if the groups remained intact, they would certainly invest elsewhere.

Secondly, the SEC's tolerance of investment clubs may be explicable on the ground that it probably lacks power to regulate such distinctly local, and usually small, undertakings. Furthermore,

33. *Int. Rev. Code of 1954*, § 401. Section 401 plans are pension, profit-sharing, or other employee benefit trusts of an employer. Those benefiting from membership in such a group must constitute either at least 70% of all employees, or at least 80% of all employees eligible to benefit, provided that at least 70% of all employees are so eligible.

34. *Int. Rev. Code of 1954*, §§ 501(c)(3), (13). Such organizations include "corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual . . ." Section 501(c)(3). In addition, "cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual." Section 501(c)(13).

35. *I.e.*, an individual, his spouse, and their children under the age of 21.

36. But just as the SEC, by Rule N-22D-1, indirectly regulates investment groups by regulating investment companies, it might conceivably exercise control over investment clubs through direct regulation of brokers by imposing certain conditions upon sales to any person the broker has reason to believe represents an investment club.
investment clubs invest perhaps entirely through brokers in transactions executed on exchanges, or in the open or counter market, rather than in original issue securities, and such investments are exempt from the prospectus requirements of the Securities Act. There may be a possibility, however, that if a club is of substantial size, membership in it will constitute a "security," subject to federal securities legislation, including the disclosure requirements.

Thirdly, family group investment schemes are easily reconcilable with the disclosure requirements. If one member of a family group qualifying under the rule has access to a prospectus, probably all members of that family do.

Fourthly, investment programs conducted by organizations described in sections 401 and 501(c)(3) and (13) of the Internal Revenue Code are reconcilable with the disclosure requirements, although many members of these organizations may never have opportunity to read the prospectuses of the open-end companies in which they invest. In investment groups, the individual members, not the groups, are the real investors. This is indicated by the fact that the group custodian maintains separate trust accounts for each member. On the other hand, though benefits ultimately accrue to employees of companies offering section 401 retirement programs, and though sums invested by companies are largely employee payroll deductions, participants in section 401 plans are investing in a company undertaking. Perhaps more significantly, by agreeing that deductions from their pay be invested pursuant to section 401 programs, the employees are, in reality, nominating the employers as their investing agents. Since section 501(c)(3) and (13) organizations are, by and large, units "no part of the net earnings of which inures to the benefit of any private shareholder or individual," they can seldom be member-oriented for investment purposes. Consequently, the disclosure requirements are satisfied in regard to the section 401 and 501 organizations if those deciding investment policy for the investors or investor have access to prospectuses.

Thus, since it is doubtful that the open-end companies instigated Rule N-22D-1 for the purpose of enhancing profit margins, and since the activities of investment clubs, family groups, and section 401 and 501 organizations can be reconciled with disclosure requirements, the rule may be sincerely directed at disclosure prob-

39. See note 36 supra.
40. Letter From SEC to Minnesota Faculty Group, July 30, 1954, on file in office of Professor John C. Kidneigh.
lems presented by investment groups. And even if the rule is an SEC response to dictation of the companies, that fact is irrelevant to whether it can be justified.

But however well-meaning, the rule overlooks the fact that the programs of investment groups are also reconcilable with disclosure requirements, whether or not prospectuses reach the members. If an investor desires to place the determination of his investments with an investment group, he is freely assuming the risk of his lack of access to prospectuses. He is making the group his agency for investment purposes, and the availability of prospectuses to the group members as a whole offers very considerable protection to him.

SEC concern with such voluntary "waivers" by group members of access to prospectuses is inconsistent with the philosophy of the disclosure requirements. And even if investment group activities could not be reconciled with disclosure requirements, it is doubtful that effectively destroying the investment groups to maintain the required standards of disclosure was necessary. The disclosure purpose of the statutes could have been effectuated by a rule requiring open-end companies to distribute their prospectuses to all group members before selling shares to investment groups, and to receive written acknowledgment from those members as evidence to the SEC of such distribution.

(2) The allowance of discounts to investment groups involves discrimination contrary to the intent of section 22(d), because reduced prices are not being granted to single members of the public, but to numerous individuals comprising selected "classes" of persons. Before Rule N–22D–1 can be condemned as ill-founded, or as employing a needlessly harsh means of achieving its purpose, it must be remembered that it is not directed solely as upholding disclosure requirements. The rule also purports to eliminate discrimination in violation of section 22(d), which the SEC believes inherent in granting discounts to investment groups. If the SEC is correct in that belief, it properly withdrew discounts from those groups. The crucial inquiry, therefore, is whether group discounting practices violate the anti-discrimination purport of section 22(d).

The purposes behind the anti-discrimination intent of section 22(d) are twofold: (1) to eliminate discrimination per se among purchasers of open-end shares; and (2) to assure the orderly distribution of open-end shares. Analysis suggests that both purposes are defeated by the granting of discounts to investment groups.

In the first place, the practice involves discrimination per se.

41. See note 29 supra and accompanying text.
43. Ibid.
Arguably, discrimination is no more present in group discounting than in any quantity discount practice. Perhaps some people of moderate means, who seldom qualify for quantity discounts feel that the entire quantity discount concept discriminates against them and that the use of groups to procure discounts only minimizes this discrimination.

However, even if there is discrimination in quantity discounting generally, it cannot seriously be considered *malum in se*. There is nothing offensive in granting an identical discount to all investors having nearly identical amounts of money to invest. On the other hand, some unfairness may exist in imposing one sales load on a single investor having a certain amount to invest, and yet imposing a lesser sales load on his neighbor, who has an identical amount to invest, simply because the neighbor pools his money with a group.

A criticism of Rule N-22D-1 might include the argument that the granting of discounts to investment groups is not necessarily discriminatory, but may only reflect an adjustment in price corresponding with the decreased expense of handling large orders. Even to the extent that discounts do reflect decreased expenses on large orders, this argument fails to account for the fact that section 22(d) is concerned with sales of open-end shares, at prices described in the prospectuses, to "any person." 44

Moreover, this argument overlooks the second purpose behind the anti-discrimination intent of section 22(d); that is, to assure orderly distribution of open-end shares. 45 When the same amount of money can result in a greater or lesser investment depending on whether it is invested through a group purchase plan, a compelling pressure toward group affiliation may be exerted on the investor. Furthermore, the realization that investors can be encouraged to buy open-end shares by the promise of high discounts through group purchases may exert a compelling pressure upon the open-end security dealers to foster group purchases. Manifestly, these pressures on both investor and distributor, each trying to parlay the price variable to his advantage, would introduce an element of disorder. And, by succumbing to the allurements of grouping, the investor would be completely restricted in investment choice, not necessarily to the companies he considered sound, but to whatever company his group happened to patronize. Such a situation would be similar to that which appeared during the early days of the investment company industry when distributors were likewise promoting


45. Note 44 supra.
sales by offering variable prices for fixed numbers of shares, and
many investors were too preoccupied with finding a company grant-
ing generous discounts to seriously examine the merits of the avail-
able securities.\textsuperscript{46} That is precisely the type of disorder section 22(d) is
designed to prevent.\textsuperscript{47}

But, as with the disclosure requirements, if the rule is honestly
intended to eliminate discrimination, it would appear to harbor
gross inconsistencies by prohibiting discounts to investment groups,
but not to employee benefit plans qualifying under section 401 of
the Internal Revenue Code, organizations described in sections
501(c)(3) and (13) of the Code, nor to certain family groups;
and by allowing no-load sales to personnel of investment companies,
their underwriters, and distributors.\textsuperscript{48}

Since by definition no part of the net earnings of many of the
preferred section 501 organizations can inure to the benefit of any
private shareholder or individual,\textsuperscript{49} it is evident that these organiza-
tions invest to fulfill their goals as organizational entities, rather than
for their members’ individual investment purposes. Consequently,
the members of most of these organizations could not possibly enjoy
a discriminatory advantage from discounted purchases of open-end
shares by their organizations. But even though the activities of many
of the preferred section 501 organizations can thus be reconciled
with section 22(d), it is doubtful that this reasoning explains their
preferred status. Rather, by omitting them from its “any person”
definition,\textsuperscript{50} the rule makes no attempt to harmonize their receipt
of discounts with the anti-discrimination purport of section 22(d).
Its preferred treatment of the 501 organizations must therefore be
attributable to the SEC’s section 6(c) authorization to grant exemp-
tions from the act “to the extent that such exemption[s] . . . [are]
. . . in the public interest and consistent with the protection of
investors and the purposes [of the act]”\textsuperscript{51} Thus, discrimination is not
even in issue, but only the desirability of the SEC’s exercise of its
section 6(c) prerogative. Although it is perhaps mystifying why the
rule favors organizations described in sections 501(c) (3) and (13),
and not some of the other section 501 organizations which appear
equally entitled to special consideration,\textsuperscript{52} it is clear that investment

\textsuperscript{46} See Jaretzki, \textit{supra} note 6, at 329–32.
\textsuperscript{47} \textit{Ibid}.
\textsuperscript{48} Rule N–22D–1(h).
\textsuperscript{49} See text at note 40 supra.
\textsuperscript{50} A separate paragraph of the rule allows discounts to § 501(c)(3) and (13)
organizations. Rule N–22D–1(e).
\textsuperscript{51} Investment Company Act of 1940 § 6(c), 54 Stat. 802, 15 U.S.C. § 80a–
6(c) (1952).
\textsuperscript{52} Section 501 organizations not allowed discounts under Rule N–22D–1 in-
clude the following:
(1) Corporations organized for the exclusive purpose of holding title to property,
groups of physicians, dentists, and college professors are not so dedicated to comparable public welfare and charity ends that public interest demands the granting of a section 6(c) exemption to them.

On the other hand, instead of receiving a section 6(c) exemption, section 401 employee benefit plans are included in the rule's definition of "any person." 53 Hence, these groups are favored not for policy reasons, but because the SEC apparently believes that their enjoyment of discounts does not involve discrimination under section 22(d). There may be some conceptual basis for this belief in the argument that companies participating in section 401 plans are investing in company undertakings, and hence such "plans" are single investing entities which should come within the "any person" ambit of the rule. In principle, however, there is no practical difference between those section 401 plans in which employee payroll deductions form a large part of the companies' investments, and in the investment groups. Like members of investment groups, the employee-members of 401 plans are investing their money in open-end shares through a group medium to obtain retirement security, and are thereby receiving discounts which their solitary investments could not gain. Therefore, if there is discrimination in granting discounts to investment groups, there is certainly discrimination in granting discounts to section 401 groups characterized by payroll deductions.

However, the discrimination involved in granting discounts to section 401 plans is perhaps less serious than that resulting from discounts to investment groups. Since employee benefit programs are institutions of the employing entities, not the individual employees, authentic single entities are investing.

To include the specified family groups in the "any person" definition is but to acknowledge economic realities. Whatever the purchase, these groups are usually single buying entities 54 and there is nothing offensive in so treating them for purposes of securities purchases, especially since the funds for most family investments are derived from one person. In addition, enforcement of the rule would be impossible if it disallowed such family grouping.

Unquestionably, the selling of shares at no sales load to personnel of investment companies, their underwriters, and distributors is discriminatory. However, these personnel must be employed for

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54. See note 35 supra.
ninety days before qualifying for such purchases, so it is doubtful that discount-free purchases are their principal motivation for working where they do. Consequently, this discrimination is not likely to cause disorder in the general market for these shares. Furthermore, these purchasers must sign a written pledge that their purchases are for investment, and not speculation, and the securities so purchased can be resold only to the issuing company. Finally, to enhance employee loyalty and morale, it is an accepted and perhaps commendable business practice in many phases of business both to grant employee discounts on employers' wares, and to give employees a financial stake in the success of the business.

Enforcement

In most cases, open-end companies can be expected to cooperate diligently with the SEC to enforce the rule. Oral arguments presented by representatives of both the companies and associations of companies voiced unanimous support of the rule. Also, the Investment Company Act of 1940 prescribes severe penalties for violations of the act's provisions, and, impliedly, the SEC's rulings relative to the act. Federal district courts are given substantial discretion in such matters and may enjoin future violations, or even direct disposal of the offending company's assets. Since salesmen are also subject to the act's penal sanctions, it is predictable that they too will endeavor to abide by the rule.

A procedure that might assist enforcement of the new rule would be that of requiring the open-end companies to obtain statements from all their purchasers that the purchases in question were being made for a single trust estate, or a single fiduciary account. A similar procedure is not without precedent in other areas. The Federal Reserve Board, for example, enforces a requirement that banks obtain statements from their borrowers that they do not intend to use loans to purchase listed securities in violation of marginal requirements.

56. Ibid.
57. Ibid.
58. SEC, op. cit. supra note 31, at 5, 34, 68.
61. Ibid.
64. Ibid.
Conclusion

As a result of the foregoing analysis, it appears that the granting of discounts to selected “classes” of investors investing through the investment group medium involves discrimination per se, contrary to the intent of section 22(d), and also tends to introduce an element of disorder in the distribution of open-end shares which the anti-discrimination intent of section 22(d) meant to eliminate. Furthermore, the allowance of discounts to organizations described in section 501(c)(3) and (13), to certain family groups, and perhaps to investment company personnel is reconcilable either with section 6(e) or section 22(d) of the Investment Company Act, or with long-established business customs. However, in allowing discounts to section 401 plans, the rule sanctions discrimination nearly identical to that it declares objectionable in granting discounts to investment groups. Therefore, while the withdrawal of discounts from investment groups is justified, it is impeachable on the basis that Rule N-22D-1 is inconsistent in its application. And, as observed earlier, the rule fails to fulfill its purpose of promoting disclosure requirements.