

PREM 19/1005

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Confidential Filing

The investigation into the possibility of removing the Stock Exchange from the scope of the Restrictive Trade Practices Act.

ECONOMIC POLICY

MAY 1979

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
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## Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

1. House of Commons Hansard, 27 July 1983,  
Columns 1194-1204
2. House of Commons Hansard, 22 November 1983,  
Columns 184-262
3. House of Commons Hansard, 30 November 1983,  
Columns 906-936

Signed Wayland Date 25 March 2013

**PREM Records Team**

The Restrictive Trade Practices  
(STOCK EXCHANGE)

Bill

Second Reading

Tuesday 22nd November 1983

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## 1. THE BILL

This two-clause Bill has been introduced to exempt certain agreements relating to The Stock Exchange from the Restrictive Trade Practices Act 1976.

It exempts any agreement between the members of The Stock Exchange which regulates the Exchange, its membership or the activities of members, including the rules, regulations and usages of the Exchange. It also exempts any agreement between The Stock Exchange and the Government or the Bank of England relating to the regulation of the Exchange. Provision is made for the removal from the register of any such agreement which is already registered under the Act and for the termination of any proceedings which are pending. The Bill follows the proposals made by the Chairman of The Stock Exchange after discussion with his Council and announced to Parliament in July. In short these were that:

- the Council would take action to dismantle by stages and with no unreasonable delay all the rules which prescribe minimum scales of commission, completing this by the end of 1986;
- The Stock Exchange continue the rules prescribing the separation of capacity of brokers and jobbers so long as the needs of the investor so require;
- the Council would introduce rules to permit non-members to serve as non-executive directors of limited corporate members of The Stock Exchange ;
- the Council would recommend to the members of The Stock Exchange changes which would:
  - \* introduce lay members to the Council;
  - \* establish a new appeal body, independent of the Stock Exchange members of the Council, which could review and over-rule any decision to reject an application for membership which complies with the rules of The Stock Exchange;
  - \* introduce a majority of people who are not Stock Exchange members of the Council to the existing appeals committee on disciplinary matters.

THE TERMS OF THIS AGREEMENT ARE DISCUSSED IN SECTION 5 ON P.3 BELOW.

## 2. BACKGROUND: The Restrictive Practices Court and The Stock Exchange.

The Director General of Fair Trading is obliged by law to register agreements containing restrictions and if necessary to refer them to the Restrictive Practices Court. The Court judges whether the restriction operates for or against the public interest. When the Restrictive Trade Practices legislation was extended so as to apply to agreements about services as well as goods, it was recognised that certain bodies and institutions should be exempted. The professions, for example, must have restrictions on entry and controls on what their members may do. The list of exemptions includes the normal services of barristers, accountants and insurance companies. The agreements of trade unions also continue to be effectively exempted.

The Stock Exchange is the sort of body that might have been expected to apply to be exempted, but it did not do so for whatever reason, and so its agreement had to be registered. The OFT put together, over a number of years, a list of the restrictions in the agreement to be referred to the Court.

Ironically one effect of putting this matter before the Court was to make it more difficult for the Stock Exchange to make any changes. The fact that proceedings were pending had the effect of freezing discussion and impeding reform. The Government was concerned about that for several reasons.

### 3. WHY THE GOVERNMENT ACTED

- First, the securities market is undergoing rapid change and becoming more competitive. Many of the dealings which used to be the preserve of national exchanges, are now being handled internationally. The Stock Exchange must respond competitively with changes of its own if it is not to lose a substantial amount of business to multi-national firms. The Exchange remains central to the working of our economy and is a valuable asset. The Government would not wish to see it hampered from meeting international competition as best it can.
- Second, the Government was concerned that adversarial court proceedings under the Restrictive Trade Practices legislation were not the appropriate way of deciding the future of a self-regulating institution like the Stock Exchange. The Court procedure is a rigid one. Even after the proceedings had ended, all future changes to the Stock Exchange's rules would have to be referred back to the Court. That procedure would not easily accommodate the Stock Exchange's need to adapt and evolve.
- Third, by a decision of the European Court of February 1983, EC directives concerning listing will now have to be reflected in national legislation. This decision is likely to produce a fundamental change in The Stock Exchange's regulatory function, and will inevitably involve the Government in the affairs of The Stock Exchange to a greater degree than before.

### 4. THE OBJECTIVES OF THE SETTLEMENT

Mr Alex Fletcher, Minister responsible for Consumer Corporate Affairs, outlined the Government's objectives in agreeing this settlement in a speech in New York on October 17th, 1983. He said:

'The....Government's approach to this is guided by two fundamental objectives.

'The first is to maintain and foster a central securities market in Britain which is efficient, comprehensive and competitive both within itself and internationally, and which is responsive to changing conditions and the changing needs both of the providers and of the users of capital.

'The second fundamental objective is that there should be proper protection for the legitimate interests of investors. This is especially important given the Government's commitment to the spread of share ownership in Britain. I believe the day of the small shareholder is returning. That can only be healthy for the British economy. Our policies in relation to the securities market must be wholly consistent with that objective.

'We want to see change - and fairly rapid change. But it must be within the terms of the objectives I have outlined. By taking the

case out of the court we are making possible an evolution, not an instant change',

## 5. THE TERMS

The possibility of removing the case from the Court had often been mooted before. But The Stock Exchange had not previously come forward with such constructive proposals for change as it did in July. In the Government's view the settlement the Exchange proposed in July constitutes an important reform.

a) The Stock Exchange will abolish, by stages, the minimum commission charged by brokers on stock and share dealings (see Appendix). This will be completed by the end of 1986. Abolishing minimum commissions will be an important step in improving The Stock Exchange's competitiveness, since other markets, like New York, have already done away with them. It will lead to substantial changes. When the New York Stock Exchange took the step in 1975, the ensuing competition obliged a number of firms to amalgamate, and others were forced out of business altogether. The Government wishes to see share ownership widely spread and so thinks it important to give small firms who deal with the small investor every chance to adapt and so to survive. The Government has therefore accepted that the abolition of minimum commissions should be phased in over a maximum of three-and-a-half years. (The New York Securities and Exchange Commission took seventeen years before ordering the abolition of minimum commissions, although once ordered, the abolition was effected rapidly).

b) The Stock Exchange would amend certain rules on entry to the Stock Exchange. Non-members of the Stock Exchange will be included on the Stock Exchange Council and may become directors of member firms. The Appeals Committee of the Stock Exchange concerned with disciplinary matters will be broadened to take in both members of the Stock Exchange who are not members of the Council, and the new lay members of the Council. In addition, applicants for membership of the Stock Exchange who are turned down, will in future be able to appeal to a new appeals body, and it will have the right to reverse the decision.

c) The Stock Exchange will continue the rules prescribing separation of the capacity of jobbers and brokers ('single capacity').

## 6. 'SINGLE CAPACITY'

When the Government announced the terms of the settlement on July 27th it made clear that it believes that the separation of the two functions of jobber and broker is in the best interests of the investor and should be maintained in its present form for the time being. It prevents a broker deriving any benefit from a transaction other than the commission he gets for effecting it. If the broker could sell stock of his own instead of having to buy it in the market from a jobber he could be tempted to give biased advice and would be able to adjust the price, and benefit unfairly. In the case of Lloyds, Parliament judged it right to require those who arrange insurance (the brokers) to be separate from those who provide it (the underwriters). In the United States, the Securities and Exchange Commission has tried repeatedly over many years to introduce 'single capacity', so far without success.

Members of the Stock Exchange have subsequently argued that single capacity will not be sustainable without minimum commissions. Mr Fletcher said, in his speech in New York that he was:



'ready to be convinced that this is the case, but if the ... Stock Exchange does decide to change its single capacity system, comparable safeguards for investors would have to be introduced'.

It would be for the Stock Exchange to make proposals to provide adequate alternative protection for investors if they feel that the present system of single capacity has, in practice, become outmoded. Mr Fletcher has made it clear that the Government is open to the Stock Exchange's suggestions for this, but he has also said that if a new system to protect the investor depends on electronic equipment, as is the case in New York, then adequate time must be provided for the purchase and installation of this equipment before the present system of 'single capacity' is changed.

In this context it should be noted that Sir Nicholas Goodison, Chairman of the Stock Exchange, was quoted by The Times of 26th October as saying:

'We must not rush our fences or anticipate any changes which might be brought about by the abolition of fixed commissions. We do not intend to push the present system towards destruction. The Stock Exchange Council will pursue a policy to maintain single capacity as long as it is commercially desirable and users want it. I do not detect general pressure to give it up as part of our first thought. We will strengthen the rules to reinforce single capacity'.

#### 7. MINIMUM COMMISSIONS

When it agreed the July settlement the Stock Exchange promised that it would 'take action to dismantle by stages and with no unreasonable delay all the rules which prescribed minimum scales of commission, completing this by 31st December 1986'. The first stage will be the ending of minimum commissions on overseas securities. Since July, however, a debate has developed about whether the remaining commissions should all be deregulated at the same time - in a 'big bang'. This happened in New York, where all minimum commissions were scrapped on May 1st 1975. The Stock Exchange has not yet reached a consensus on this subject. If it does decide that abolition in a single step is preferable the Government will not necessarily object. But it will need to be sure that the 'big bang' will take place at an early and identifiable date and that it will not cause the system of single capacity to break down before a replacement is available.

#### 8. IMPLEMENTATION OF THE AGREEMENT

In July Mr Parkinson said that 'the Government will seek the approval of Parliament for measures to exclude The Stock Exchange from the operation of the Restrictive Trade Practices Act' in order to allow the agreement to be implemented. This, however, would be subject first, to the approval by The Stock Exchange membership of the necessary changes to the Stock Exchange Deed of Settlement and, second, to the establishment of monitoring arrangements involving the Department of Trade and Industry and the Bank of England to oversee reform.

- a) The Stock Exchange. Considerable progress has been made by The Stock Exchange in implementing these proposals. The membership has agreed to the necessary changes to the Deed of Settlement and the Council has agreed in principle that minimum commissions on dealing in overseas securities should be dropped early next year. Decisions covering other types of securities will follow later.

On July 28th, 1983, The Stock Exchange applied for and obtained an adjournment of the Court proceedings. Following meetings of The Stock Exchange Council when rule change proposals were drawn up, an Extraordinary Meeting of Members of The Stock Exchange was held on October 11th. At that meeting changes to the Deed of Settlement were agreed which provide for:

- Lay-members to be admitted to the Council of The Stock Exchange;
- the minimum numbers of the Council to be reduced from 35 to 30 and the maximum limit abolished;
- the number of lay-members of the Council to be limited to 25%;
- the Council to remunerate lay members;
- a majority of laymen to be introduced to a new Disciplinary Appeals Committee of the Council;
- an exclusively lay Membership Appeals Committee;
- the Membership Appeals Committee to override a decision of the Council to reject an applicant for Membership who fulfils the requirements of the rules and
- the Council to appoint non-Council members to its committees and sub-committees.

- b) Official Monitoring. Arrangements have now been made by the Department of Trade and Industry and the Bank of England to monitor developments in The Stock Exchange. During the summer a new body was set up to oversee the implementation and effects of the various reforms. The monitoring body, which meets regularly, consists normally of officials from the Department of Trade and Industry, the Bank of England and The Stock Exchange.

Appendix /...

The Fixed Commissions that will goStocks and shares

<u>Price band (£)</u>	<u>Rate %</u>
first 7,000	1.65
next 8,000	0.55
next 115,000	0.5
next 170,000	0.4
next 600,000	0.3
next 1,100,000	0.2
on the excess	0.125

The minimum commission on bargains of £300 or more consideration is £7 for a sold bargain and £10 for a purchase bargain. Bargains with a consideration less than £300 may be charged at discretion.

Long-term gilt-edged stocks

<u>Price band (£)</u>	<u>Rate %</u>
first 2,500	0.8
next 15,000	0.25
next 982,000	0.125
next 3,000,000	0.1
next 6,000,000	0.05
on the excess	0.03

Debentures

<u>Price band (£)</u>	<u>Rate %</u>
first 5,000	0.9
next 5,000	0.45
next 40,000	0.35
next 20,000	0.325
next 770,000	0.25
next 1,100,000	0.175
on the excess	0.125

RE/AM  
17.11.83

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File with  
Stou Exchange  
papers.

25th October, 1983

Dear David,

Here is a copy of a speech that I gave at the Financial Times Conference yesterday on the Financial Services Revolution. It is really an enlargement of the paper I did for you earlier this year.

Yours sincerely,

Jaw

(Jacob Rothschild)

David Wolfson, Esq.,  
10 Downing Street,  
London W.1.

NCJR/jmc

THE FINANCIAL SERVICES REVOLUTION

I hope it will not be thought inappropriate if I start this address with a brief quotation from a nineteenth century English Prime Minister who was a friend of my family. It was Disraeli who once said:

"I have ever been of the opinion that revolutions are not to be evaded."

However much some of us might wish to evade the revolution in financial services which we are here to discuss today, it is becoming extremely difficult to do so. By increasing awareness of the issues involved, the Financial Times has, of course, given a notable lead, even if by doing so it has made the preparation of all our speeches that much more more daunting. In my own case I have frequently felt the ground slipping beneath me as I have discovered that I have been pre-empted by yet another excellent article in that paper. My discomfiture apart, the problem we face is not, then, one of awareness. It is rather whether we, as practitioners, will be willing to experiment sufficiently and to risk enough to become fully engaged in the changes taking place around us. We have, moreover, to make such a commitment at a time when the financial service sector is enjoying an era of unparalleled growth and prosperity. Yet our own painful industrial evolution serves to remind us just how difficult it can be to jettison profitable investments and time-honoured practices for the new and unfamiliar.

/ We are, of course,

We are, of course, talking about a sector which traditionally has shown a rather conservative face to the world. This is inevitable and quite proper, for it has borne heavy prudential responsibilities. It has been rightly proud of its past achievements, and looks to the future with self-confidence. Britain may have withdrawn from the battle for industrial hegemony, and surrendered her lead in textile manufacturing, the laying of railways, the production of iron and steel, and the building of ships, but we have always had the hope and consolation that in the arena of financial services, in which we enjoy a unique reputation and tradition of excellence, the line could be held.

The financial sector has been underwritten in this country by stable and conservative government, which can be relied upon to encourage its growth and prosperity. Britain's historic links throughout the world have helped to establish reciprocal ties and relationships and English has become the "lingua franca" not only of international finance, but also of data processing. With business increasingly carried out on, down and through the telephone, that is an immense competitive advantage. London is, of course, well placed geographically between the financial battlegrounds of New York and Tokyo, and fortunate to sit astride the world's time zones. By extending an agreeable and fiscally friendly welcome to foreign companies and individuals, she has encouraged an influx of people and firms, and created a lively market place. In a world economy which is becoming more and more service-orientated, are we not entitled to feel confident? London as financial powerhouse of

/the world

the world has indeed been an intoxicating and potent symbol.

Let us, however, pause to consider the shape of things to come, and examine the universal financial institutions with which we in this country will have to compete. For the rules by which London has so successfully played the game are being re-written by our international competitors.

We will not only have to come to terms with the electronic society and the fundamental changes which the revolution in communications and information systems has made possible. We shall also have to cope with the response of a banking community, overstrained by the excesses of international lending in the 1970s which has to attune itself to the quite unexpected monetary, interest rate and exchange rate volatility of the 1980s. Paradoxically, this sector will draw in its horns in providing capital just when global financial services are becoming possible. In 1981, for example, net bank lending to the Third World was \$50,000 million, while at an annual rate in the fourth quarter of 1982, it was less than \$10,000 million. The capital, expertise and energy directed towards achieving a market share in the era of excess lending will now seek other avenues of expansion.

We can expect the emergence of a number of financial conglomerates with interests straddling disciplines which traditionally have been distinct. Responsive to international market conditions, they will provide a comprehensive range of services to the citizens, companies and governments of the free world. Their menu will be extensive: insurance, credit, options, futures, stocks, bonds, cash management, money transfer, exchange, mortgages, financial, legal and travel advice - all these and

/many other

many other agency functions will be described in this conference - and they will be served up and sold throughout the world for twenty four hours a day.

But the giant institutions of the future will not be satisfied with providing comprehensive financial services. Those with a banking capacity will seek to find an alternative to the 1970s balance of payment lending so that their crucial role in financing international trade and projects can go on. To correct the failures of past lending policies, there may well be a re-orientation to the tried techniques of linking credit to goods. The financial sector will try to re-establish its close relationship with the commodities and products which countries and corporations must produce and move around the world to sustain economic recovery. Trading companies may develop their financial arms and the banking system will become more deeply involved in trading, commodities, barter and counter-trade. As the process of deregulation continues, the two broad types of giant institution, the worldwide financial service company, and the international commercial bank with a global trading competence, may themselves converge to form the ultimate all-powerful, many-headed financial conglomerate.

Is it, I wonder, likely that the British financial services community will want to be included wholeheartedly in the nightmarishly complicated scenario I have sketched, entry into which will demand a huge effort, not only of capital, but also of imagination and risk?

In the City of London we can, perhaps, identify two broad categories. On the one hand we find the individualistic

/specialised firm



specialised firm, which has shown a tendency to become risk averse and conservative. This is a natural reaction to the large profits which, almost to its disbelief, it has made in the ten years after the appalling fright it experienced in the financial crisis of the early 1970s. On the other hand there are the larger institutions, many of which retain a healthy scepticism about adventuring into uncharted territories, and are chary of the emerging "jack of all trades" across the Atlantic. They would prefer experiments in inter-relationships before irreversible integration, and would consider that stability and responsibility should take precedence over attempts at financial innovation and universalism. Efforts at cross-fertilisation have often proved futile or ended in unhealthy cross-infection. They would argue that a good market is made up of all types, shapes and sizes, and that the City of London has encouraged a wide variety of financial developments and initiatives in the last ten years. There are the examples of the growth of the Eurobond market after the Interest Equalisation Tax was abolished in 1963, and, more recently, the financial information systems brilliantly developed by firms such as Telerate and Reuters. Another recent area of success is that of international money broking, which has grown into a worldwide intermediary business.

There are indeed many great success stories. But on the whole they represent new, almost "grass roots" initiatives, and are not the work of our established firms. Here is surely some cause for alarm. We are increasingly aware of international competition exemplified by the massing of Wall Street investment banks in London, old hands at securities trading and underwriting.

/We are under

We are under threat not only because of aggressive marketing, but, more fundamentally, because foreign financial institutions have the capital base from which to launch their attack.

A comparison between the size of some of the British financial institutions and service companies and their international competitors is relevant in this context. "Size" is, of course, difficult to measure, and categorisation becomes less meaningful as the financial sector converges. So I have taken market capitalisation as a yardstick, for it shows what investors think the companies in question are worth, and I have made sector comparisons which I believe all of you here will understand.

UNITED KINGDOM

Market Capitalisation  
 £m at July 1983

Clearing Banks

Barclays Bank PLC	1,603	
National Westminster Bank PLC	1,528	
Lloyds Bank PLC	1,045	
Midland Bank PLC	753	
The Royal Bank of Scotland Group	276	
		<u>5,205</u>

Merchant Banks

Kleinwort Benson Ltd.	235	
Hill Samuel & Co. Ltd.	184	
The Charterhouse Group Ltd.	171	
Mercury Securities Plc	165	
Hambros P.L.C.	122	
Schroders P.L.C.	95	
		<u>972</u>

Money Brokers

Exco International PLC	296	
Mercantile House Holdings plc	272	
		<u>568</u>

Discount Houses

Gerrard & National PLC	56	
The Union Discount Co. of London P.L.C.	55	
		<u>111</u>

UNITED STATES

Market Capitalisation  
 £m at July 1983

Commercial Banks

Citicorp	3,170	
BankAmerica Corporation	2,285	
The Chase Manhattan Corporation	1,154	
		<u>6,609</u>

Financial Services and Brokers

American Express Company	4,800	
Merrill Lynch & Co. Inc.	2,648	
Phibro-Salomon Inc.	1,392	
E.F. Hutton Group Inc.	779	
Paine Webber Inc.	430	
		<u>10,049</u>

JAPAN

Market Capitalisation  
 £m at July 1983

Banks

The Dai-Ichi Kangyo Bank Ltd.	3,250	
The Sumitomo Bank Ltd.	3,120	
The Fuji Bank Ltd.	3,110	
The Mitsubishi Bank Ltd.	3,110	
		<u>12,590</u>

Securities Firms

The Nomura Securities Co. Ltd.	3,278	
The Nikko Securities Co. Ltd.	1,356	
Daiwa Securities Co. Ltd.	1,219	
Yamaichi Securities Co. Ltd.	1,046	
		<u>6,899</u>

Trading Firms

Mitsubishi Corp.	1,756	
Mitsui & Co. Ltd.	973	
Sumitomo Corp.	737	
C. Itoh & Co. Ltd.	669	
Marubeni Corp.	647	
		<u>4,782</u>

UNITED KINGDOM

Market Capitalisation  
 £m at July 1983

Insurance Companies with Life Interest

The Prudential Assurance Co. Ltd.	1,223	
Guardian Royal Exchange Assurance PLC	720	
Legal & General Group PLC	661	
Eagle Star Insurance Co. Ltd.	580	
Hambro Life Assurance PLC	470	
		<u>3,654</u>

Insurance Brokers

Sedgwick Group PLC	460	
Willis Faber PLC	220	
C.E. Heath PLC	94	
Minet Holdings PLC	90	
Stewart Wrightson Holdings PLC	44	
		<u>908</u>

UNITED STATES

Market Capitalisation  
 £m at July 1983

Insurance Companies with Life Interest

Cigna Corporation	2,143	
The Travelers Corporation	1,778	
Transamerica Corporation	<u>1,141</u>	
		<u>5,062</u>

Insurance Brokers

Marsh & McLennan Companies Inc.**	1,092	
Alexander & Alexander Services Inc.	307	
Frank B. Hall & Co. Inc.	225	
F.S. James & Co.	195	
Corroon & Black Corporation	<u>114</u>	
		<u>1,933</u>

\*\* including other financial services

JAPAN

Market Capitalisation  
 £m at July 1983

What these figures, of course, underline is the discrepancy in size between some of the sectors and firms here in comparison with their counterparts in the United States and Japan. To put forward another perspective: I am told that Salomon Brothers earned approximately \$500 million last year. The ninety London Stock Exchange firms do not publish their profits (with the exception of the two quoted jobbing companies), but I feel I am on fairly safe ground if I state that the combined profits of the London Stock Exchange came to less than this figure. Certainly, the published profits of all the quoted merchant banks taken together fall short of it by a wide margin. You may well say that differences in size are not decisive and may be of no great significance to the future prosperity of the City of London and those who work here. You may believe that the combination of gifted people and great names will, in the long run, prove to be as important as capital and structure. But as the build-up of foreign firms in London has accelerated and continues to accelerate, the opportunities for people will become increasingly international. We must expect that human talent will be susceptible to the attractions of firms which are both breaking new ground and, at the same time, setting a pace in terms of remuneration and incentives vastly in excess of those to which the domestic market has become acclimatised or would find feasible. We have all read of the extra-ordinary offers being made to investment analysts by some of the American securities houses. Yet the highest paid executive in the United Kingdom financial services sector, according to my search of the annual report and accounts of the various companies shown in the tables, received £126,000. Only six other directors earned more than £100,000. In saying this, partnerships which do not publish remuneration figures

/and certain

and certain other financial service subsidiaries of public companies are excluded.

The proxy statements of the American institutions reveal a very different picture however. The most highly paid executive at Phibro-Salomon, for example, received more than \$2,750,000 last year. At Merrill Lynch, the Chairman was paid just under \$1,550,000. In the Wall Street house in which my company has a 50% interest, no less than six people will receive more than \$1,000,000 in the present year; moreover, this is before drawing their/<sup>profit</sup>share in the partnership. At less elevated levels, where the "loyalty" factor to the institution may be less telling, the search for talent and the rewards which talent can command will surely increase.

The future structure of the London Stock Exchange has become a subject of intense interest and debate now that it will not be determined by the Restrictive Practices Court. The first steps towards reform have been taken by the members in agreeing to negotiated commissions. It must be said that the case for adjustment has become a compelling one. If London is to establish itself firmly as a European centre capable of challenging the might of Tokyo and New York, it must demonstrate that its markets have the depth of liquidity necessary to attract traders in securities. In this light, it seems that a system of minimum commissions, unlimited liability, restrictive membership and single capacity, buttressed by the 2% Stamp Duty, has worked against capital accumulation, and is damaging to the prospects of the Stock Exchange of the future.

/It is clear

It is clear that the uncertainty and unpredictability of unlimited liability, together with the tax-shelter afforded by partnerships, has not encouraged the long-term build-up of resources essential for the creation of a liquid market. The combined capital of the London jobbing firms, for example, is thought to be less than £100,000,000. The contrast with the impressive record of our insurance brokers, after they were permitted to form limited liability companies, is a telling one. The dampening effect which this has had on the turnover rate of equities in London has been compounded by the operation of the 2% Stamp Duty. Levied on anyone other than a jobber trading in securities, it is unique in its severity in international terms. A vicious circle of low levels of liquidity leading to low levels of activity has thus been set in motion.

It is surely no coincidence that since deregulation in May, 1975, the New York Stock Exchange has, by contrast, succeeded in establishing a "benign" circle of high levels of liquidity and activity. The turnover figures of equity for London and New York, and turnover as a percentage of market value, make a striking contrast.

/...

Turnover of Equities 1977 - 1982

	1977	1982
	£m	£m
New York	82,828	279,083
London	10,084	18,707

Percentage Increase 1977 - 1982

New York	237%
London	85.5%

Turnover as a percentage of Market Value 1977 - 1982

New York	20	38.8
London	16.7	15.4

Source: Stock Exchange Fact Book

Over that period the equity base of the American Securities Industry increased by 256%, while the capital base of the London Stock Exchange grew by only 36%. It is also significant that the companies with the capital and capacity to respond to market forces increased their share of business most dramatically. In 1971, the top eight New York Stock Exchanges firms took 25% of total revenues, while by 1980, that share had risen to 39%. Before Mayday 1975, block transactions made up under 16% of volume; in 1982, 41%. The pressures of free competition provoked an increasing emphasis

/on retailing competence



on retailing competence, and this, perhaps coupled with the cheapness of discount brokerage firms, has led to a healthy broadening of share ownership. According to the New York Stock Exchange Fact Book, an estimated one in five of American adults now owns shares and therefore contributes greatly to the liquidity of the market. This compares with perhaps one in twenty five adults in the United Kingdom. Although fears similar to those now being aired in London were expressed on the New York Stock Exchange in 1975, it is clear that the impact of deregulation has been positive in stimulating activity and capital accumulation.

The case for discontinuing the "closed shop" and for allowing outside ownership beyond the level of 29.9%, so that additional capital can be admitted, has become increasingly compelling. Safeguards and a period of transition may well be needed to prevent even the largest firms, which are tiny by international standards, from being absorbed, but that should surely not be beyond our ingenuity. Similarly, to encourage large-scale commitment of capital, we must abolish the 2% Stamp Duty, or at least extend exemption from it beyond jobbers to all those who are prepared to make markets. The advantages brought by greater liquidity would, of course, be felt outside the confines of the Stock Exchange itself and would spill over into trading on the options and futures markets. In the twenty years during which the Eurobond market has developed from what was a British initiative we have seen the position of the London merchant banks and stockbrokers diminished in both primary and secondary markets to a point where only one institution has appeared consistently in the top twenty of the league tables drawn up

/by Institutional

by "Institutional Investor" since 1975. A capital market with greater liquidity and within which the wholesale and retail elements were encouraged to cross-fertilise would help to underwrite our position as the European financial centre and provide an opportunity for British companies to strengthen their position.

Abolition of Stamp Duty would undermine the distinction between jobber and broker and make it even more likely that the days of single capacity will be numbered. Many will still argue that single capacity has been essential in performing the vital task of protecting the investor from abuse and eliminating the kind of malpractice associated with the unscrupulous "jobber" of Victorian literature. But does the "prudential" case for single capacity remain valid when dual capacity has been practised without harm to the investor not only in the United States, but also on our own doorstep in other areas of the market place?

In the City of London the merchant banks function with dual capacity in many of their activities, as do participants in the Eurobond market, many of whom are Stock Exchange firms. Outside the London Stock Exchange itself, member firms are free to operate dual capacity through their foreign subsidiaries. In the areas of fund management and new issues, firms have already created triple and quadruple capacity, and the conflicts of interest and scope for abuse are just as pertinent; indeed,

/it is arguable

it is arguable that in the areas of 'late booking' and in the thinly capitalised company, whose shares are easily manipulated, the greatest examples of investor abuse have been taking place. Techniques of electronic surveillance make possible complete disclosure of information and inspection of transactions, and these, coupled with outside supervision, may provide more effective protection in the future than limiting capacity.

In continuing with single capacity, even if only for the time being, we find ourselves out of step with the United States and Japan. The transition towards universal financial services will be facilitated by regulatory harmony between countries, and just as we feel the need for world standards in the field of consumer electronics, so we will in financial services. The country which maintains "incompatible" rules and regulations may find itself seriously disadvantaged and cut off.

All countries are faced with the problem of regulatory changes and reforms at a time when financial institutions are converging, and treading a turf previously occupied by others. The regulators, as well as the regulated, will have to adjust to developments and make decisions as to who will regulate what: for example, in the United States, will it be the Securities Exchange Commission or the Commodities Futures Trading Commission which regulates the Chicago Exchange future or options market, whose members include commodity brokers and Stock Exchange firms?

In this country, with its tradition of consensus self-regulation, the future of the Stock Exchange has been taken away from the courts, but it remains to be seen who will organise

/and supervise it.

and supervise it.

- 16 -

The Department of Trade, the Bank of England, the Council for the Securities Industry, and the Stock Exchange all remain interested parties. The commodity firms who remain largely unregulated are entering regulated markets through, for example, their membership of the London International Financial Futures Exchange, which "de facto" is responsible to the Bank of England. There will be many more examples of hybrids which will not fit easily into existing regulatory and supervisory boxes, so that the process of regulation and supervision will be a complex one. The delicately balanced objective must be first to maintain the priority of stability, but secondly to encourage and accommodate but not frustrate the changes that are taking place.

The subject of my talk was billed as being "The Building of a Financial Services Company", and I am conscious of having concentrated on broader issues. Deliberately I have not talked about the nuts and bolts of such an exercise, partly because I can truthfully say that there are many people better qualified than me to do that, including my friend, the next speaker, Mark Weinberg. I have after all only had three years' experience as the full-time Chairman of RIT and Northern, and we remain an investment trust, albeit with a variety of interests in financial services. The most important of these is a 50% interest in a leading Wall Street house, and in addition, we control 60% of a unit-linked life assurance company and a unit trust company, 60% of an independently run money management company, 75% of a small, but fast growing factoring business, 37.5% of a firm of insurance brokers, 29.9% (the permitted maximum) of a firm of stockbrokers, and complete ownership of a leasing company which specialises in the field of office equipment. While we have,

/therefore

therefore, made a start by testing the water in the shallow end of a very deep swimming pool, I believe it is important that one or two concerns in the United Kingdom show themselves willing to jump in with both feet, and to play an active part in the re-definition of the financial sector's competitive boundaries.

In offering you these general thoughts and by highlighting some of the challenges facing us I hope I might at least provoke further discussion. I much look forward to participating in the panel debate later on this morning.

I would like to end, as I started, with a quote from a Victorian. It was nearly one hundred years ago that the Commission on the Depression of Trade insisted:

"...if our position is to be maintained, it must be by the exercise of the same energy, perseverance and readiness of resource by which it was originally created".

These words are worth remembering for all of us here who are concerned with competitive success rather than mere survival as the winds of change gust across the financial services sector.

/jmc

21.10.83

Prime Minister ④

18 October 1983

MR TURNBULL

To note

cc Mr Mount

AT 18/10

mt

THE STOCK EXCHANGE CHANGES

Now that the Stock Exchange has approved the deal struck with the Secretary of State for Trade and Industry, events are likely to move quickly in the Square Mile. We should claim more credit for breaking a cosy cartel and introducing competition and innovation.

1. Minimum commissions on gilt-edged securities will be abolished from the beginning of 1984. It is quite likely that commissions for larger bargains in the Government securities market will halve.
2. Some market players are keen to speed up the reduction in commissions on equities. The US experience would point to something like a 40 per cent decline in the institutional commission rates on larger bargains, although the US did start from a higher level of commission than we are starting from.
3. There will be "unbundling" of the different services stockbrokers provide. There will be a separate negotiation over the amount of research material to be provided, and it is likely that some stockbrokers will specialise as "execution houses", merely carrying out bargains and providing no other services.
4. It is difficult to see that single capacity, the separation of stockbroking from stock-jobbing, can survive indefinitely. Mr Alex Fletcher, the Minister for corporate and consumer affairs, acknowledged this in New York yesterday. Already important institutional houses like Flemings have made the necessary moves to be able to trade freely in stocks on their own account and for their clients, should the single capacity system break down.
5. It is likely that new businesses will enter the general financial service area and aim to take a share of the stockbroking and even stock-jobbing market.

6. The key to success for any business in this new environment will be access to the retail client.

#### Conclusion

The deregulation of the Stock Exchange could be welcomed as an example of how competition will indeed work. So far, we have failed to capitalise on the radical nature of the deal and the likely changes. Our vulnerability lies on two counts. Firstly, commission rates for the smallest bargains for private individuals may have to rise, as they are currently uneconomic. Secondly, unless stamp duty is abolished, there will be a tendency for the market in main board UK equity stocks to gravitate towards the US, where they are American Depository Receipt quotations in such stocks. By dealing in ADRs and leaving the stock in the US, it is possible to avoid the 2 per cent tax on the purchase of new shares. Whilst it is not an expedient time to be recommending an extension of tax expenditures, it is nonetheless true that the competitiveness of the London market would be greatly enhanced if, at the same time as commission rates and jobbing turns are being squeezed, the Government also made its contribution to making dealing in London internationally competitive.



JOHN REDWOOD



~~CC NO~~

Treasury Chambers, Parliament Street, SW1P 3AG  
01-233 3000

22 September 1983

Jonathan Spencer Esq  
Private Secretary to the Secretary of State for  
Trade and Industry  
Department of Trade and Industry  
Victoria Street  
LONDON SW1

*FB*

*NBPM*

*MCS 23/9*

*Dear Jonathan,*

THE STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

I am writing to confirm my earlier telephone message that the Chancellor agrees with your Secretary of State's proposals, set out in his minute of 15 September, for using primary legislation to stop the proceedings against the Stock Exchange in the Restrictive Practices Court.

I am copying this letter to the Private Secretaries of members of E(A), the Lord President, the Lord Chancellor, the Attorney General, the Lord Privy Seal and Sir Robert Armstrong.

*Yours sincerely,*

*Margaret O'Mara*

MISS M O'MARA  
Private Secretary



ECON for Stock Exchange

May 79.

SEP 10 1979

1 2 3 4 5

cc/NO

WBPM

MS 21/9

CONFIDENTIAL

01-405 7641 Ext.

Communications on this subject should  
be addressed to  
The Legal Secretary  
Attorney General's Chambers

ATTORNEY GENERAL'S CHAMBERS  
LAW OFFICERS' DEPARTMENT  
ROYAL COURTS OF JUSTICE  
LONDON, W.C.2

Our Ref: 400/83/178

20 September 1983

Jonathan Spencer Esq  
Private Secretary  
Secretary of State for  
Trade and Industry  
1 Victoria Street  
London SW1

Dear Jonathan,

**THE STOCK EXCHANGE AND THE RESTRICTIVE  
PRACTICES COURT**

The Attorney General agrees with your  
Secretary of State's minute to the  
Prime Minister of 15 September.

I am copying this to the Private Secretaries  
to the Prime Minister and other members  
of E(A), the Lord President, the Lord  
Chancellor, the Lord Privy Seal and  
Sir Robert Armstrong.

Yours sincerely  
*Laurence Oates*

LAURENCE OATES

CONFIDENTIAL

Elons for: Stock exchange  
Restricted Practices  
May 79

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10 DOWNING STREET

16 September 1983

From the Private Secretary

DfW.  
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LPO  
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MAFF  
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CDL  
DfWp.

Dear Jonathan,

The Stock Exchange and the Restrictive Practices Court

The Prime Minister was grateful for your Secretary of State's minute of 15 September.

Mrs. Thatcher agrees, subject to the views of colleagues, to proceeding by means of primary legislation, as proposed by your Secretary of State.

I am sending copies of this letter to the Private Secretaries to the members of E(A), the Lord President, the Lord Chancellor, the Attorney General, the Lord Privy Seal and Sir Robert Armstrong.

Yours sincerely,

Michael Scholar

Jonathan Spencer, Esq.,  
Department of Trade and Industry

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SWP



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PRIME MINISTER

C NO,

CONFIDENTIAL

\* Lord Cockfield  
(flag A) so  
recommends  
Yes not

Prime Minister

(1)

Agree to primary  
legislation\* (envisaged)

at your meeting at the House in July)?

MUS 15/9

THE STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

When Cabinet agreed on 26 July that the concession offered by the Stock Exchange justified stopping the proceedings in the Restrictive Practices Court we did not decide whether the decision should be implemented by Order or by a Bill.

2 Exemption for any future agreements can be secured by an Order under the restrictive trade practices legislation, but there remains some doubt whether such an Order would be effective in ending the Court's jurisdiction in the present proceedings.

3 The Attorney General takes the view that in any event it would be pointless for the present proceedings to be continued and that the Director General of Fair Trading should therefore not oppose an application to adjourn them sine die. Both the Attorney and I have seen the Director General, but he feels unable to commit himself to this course. His Counsel has said in Court that unless there were primary legislation the Director General would remain under a statutory duty to continue with the proceedings. The Stock Exchange's lawyers, on the other hand, believe that an Order would have direct effect and they would so argue in Court. Thus, if we proceed by Order we face the prospect of litigation about its effectiveness, and conceivably having to return to Parliament with a Bill. Such an outcome on a controversial issue like this would be politically damaging.



4 I therefore believe that we should proceed by primary legislation from the start. There would be no doubt of the effectiveness of a Bill. It would also avoid the need for any further Court hearings to tie up loose ends, and would avoid the requirement of the Restrictive Trade Practices Act for public consultation and representations about an Order.

5 The Bill would be very short. It would simply exempt the Stock Exchange from the restrictive trade practices legislation for the future and provide for the de-registration of the present agreement. It would, of course, be controversial: but no more so than an Order, which would have to be debated against the background of the Director General's publicly stated view that such an Order would be ineffective. I would hope to have a Bill ready to introduce immediately after the recess. There is already a contingent place in the programme.

6 I should be grateful to have your agreement to proceed by primary legislation. In view of the tight timescale if we are to have a Bill ready by the time Parliament reassembles, I should be glad if any colleagues who have points to raise would do so by the end of this week.

7 I am copying this to members of E(A), the Lord President, the Lord Chancellor and the Attorney General. I am also sending copies to the Lord Privy Seal (since if E(A) approves the policy



we shall need early authority to employ Parliamentary Counsel)  
and to Sir Robert Armstrong.

CP

C P

15 September 1983

Department of Trade & Industry

Exam Pd,  
May 74,  
Stock Exchange





CONFIDENTIAL



Chancellor of the Duchy of Lancaster

*A*  
Prime Minister

MUS 15/9

PRIME MINISTER

THE STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

I have seen the Secretary of State for Trade and Industry's minute to you of today's date.

While the attitude of the Director General of Fair Trading is to be regretted, it is a fact and one we have to take into account. While, strictly, the litigation would be between the Stock Exchange and the Office of Fair Trading, it would be clear that it was the Government which was really the subject of attack by the Director General. It would be most unfortunate for the Government to be embroiled in such a contest: if the Director General won, the result would be highly embarrassing and would demand legislation: if the Director General lost, it would destroy his public standing. On all these grounds, I would support the view of the Secretary of State for Trade and Industry that we should proceed by primary legislation.

I am sending copies of this minute to the Secretary of State for Trade and Industry and to the other recipients of his minute.

*A.C.*

A C

15 September 1983

CONFIDENTIAL

Top Copy Filed on Local Govt Relations  
cc Stock Exchange file  
hrf

There were four statements today.

1. The Scottish Rates Support Grant

This was a fairly routine occasion giving Opposition members a chance to complain generally about interference with local government. There was comparatively little support from Government benches but Mr. Younger had no difficulty.

2. Stock Exchange

Mr. Parkinson's statement predictably aroused the wrath of the Opposition who accused the Government of exempting their friends in the City from the requirements of the law. There was, however, a general welcome from the Government side for the statement and considerably detailed questioning about the agreement reached with the Stock Exchange. Opposition members were not interested at all in the contents of Mr. Parkinson's statement and he was able to make effective use of the point that the Opposition had given the trade unions very considerable immunities while requiring nothing from them in exchange. He also stressed the desirability of settling matters out of court at a great saving to the taxpayer. Generally speaking the Opposition were not able to make their charges stick.

3. Public Expenditure

Mr. Rees had a considerable success with his statement both in its content and style. The approach of the Opposition clearly demonstrated there would have been disproportionate trouble had the statement not been oral. But Mr. Rees' low-key approach was, I suspect, far more successful in diffusing the situation than would have been the Chancellor. The Opposition questioning concentrated on job losses, in particular in the National Health Service which suggests that you may have the figure of 8,000 job cuts quoted to you tomorrow.

/4. Gibraltar

4. Gibraltar

Mr. Stewart's statement received a low-key response as befitted the fourth statement on a hot afternoon. The settlement was generally welcomed even amongst some Opposition members, who could not make up their minds whether the amount of work which had been guaranteed to the commercial dockyard was too great or too little. I think it unlikely that the subject will come up at Questions tomorrow.

5. White Paper on the Rates

Mr. Kaufman sought to cause a row about the delayed publication of the Rates White Paper calling on two occasions for a statement. It was clear that the Speaker was not going to be very helpful on this and in the end Mr. Jenkin had to come to the House to explain why the White Paper was not being published until next week. The Speaker allowed Mr. Kaufman to question Mr. Jenkin but he was able successfully to damp down the little excitement which was still left.

12

27 July, 1983

CC MAJTER



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ke - Home Office  
M.A.  
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DW -

10 DOWNING STREET

From the Private Secretary

27 July 1983

Dear Jonathan,

The Prime Minister held a further meeting about the Stock Exchange in her room in the House last night. The Lord President, the Lord Chancellor, the Chancellor of the Exchequer, the Lord Privy Seal, your Secretary of State, the Chancellor of the Duchy of Lancaster, the Attorney General, Sir Robert Armstrong, Mr. Peter Gregson and Mr. Alison were present.

In discussion, it was noted that the main reason why the Stock Exchange had become an issue just before the Recess was the Stock Exchange's earlier refusal to countenance any change in their procedures. But a decision was urgently required, which would permit your Secretary of State to make a statement in time to allow the Stock Exchange in turn successfully to request a stay for four months of the case currently before the Restrictive Practices Court. If no statement were made and if no stay were granted, the Stock Exchange as well as the Treasury and Bank of England would incur very large expenses in the coming months as they went ahead in preparing their case before the Court. Sir Gordon Borrie was likely to acquiesce in the Stock Exchange's request for a stay if the Government had first made a statement indicating that it would do what was necessary to secure Parliamentary approval for the exclusion of the Stock Exchange from the provisions of the Restrictive Trade Practices Act.

On the other hand, it was noted that the laying of an Order in the autumn might not prevent the Court from going ahead with the case. It was essential to avoid a situation in which the Government first announced that it would exclude the Stock Exchange from the provisions of the Act, then failed to carry that through. In this circumstance primary legislation would be necessary. It was noted that such legislation could be short and simple, given that its purpose would simply be to add the Stock Exchange to the list of people exempted from the provisions of the Act; there was no question of the Bill itself setting out a framework of regulation for the Stock Exchange. On the other hand, it would be desirable if possible to avoid a commitment now to primary legislation. Your Secretary of State should tell the House that the Government would seek the approval of Parliament for measures to exclude the Stock Exchange from the operation of the Act.

/ Your

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Your Secretary of State's statement would also need to indicate that the Government welcomed the changes proposed by the Stock Exchange Council. These proposals were, of course, subject to ratification by the Members of the Stock Exchange, and so the Government's agreement to seek the exemption would have to be dependent upon such ratification. It was recognised that the Stock Exchange Council's proposals went only some way in the right direction, and that it would be essential to maintain and strengthen the penultimate paragraph of the draft statement attached to Ruth Thompson's letter to me of 26 July, which indicated that the Bank of England and the Department of Trade and Industry would be monitoring the implementation of the Stock Exchange's proposed measures, and the evolution and development of the Stock Exchange as an efficient, competitive and suitably regulated central market which affords proper protection to investors. It might be that the single capacity rule should in time be abandoned: there were those who argued that the single capacity system had seriously inhibited the expansion of the United Kingdom securities industry, that stock markets abroad operated successfully without this system, and that many domestic financial institutions free of such restrictions had developed both strongly and prudentially. Similarly, there were those who thought that it would be vital for the Stock Exchange's future that its Membership should be enlarged to include corporate bodies with limited liability, since this would provide a substantial boost to the capital employed in the industry and enable it to take greater advantage of its opportunities. But these were changes for the medium or longer term, and it was important to ensure that the reform of the Stock Exchange remained an evolutionary and gradualist process. Your Secretary of State's reply to Sir Nicholas Goodison's letter recording the resolutions of the Council would, in this context, be an extremely important document: it would indicate the Government's seriousness about the further reforms, whose shape could not now be clearly envisaged, after the implementation of the present proposals and the exemption of the Stock Exchange from the provisions of the Act.

The Prime Minister, summing up the discussion, said the immediate important task was to retain control of events, to secure a stay this week, and an adjournment sine die after the long vacation. To this end your Secretary of State should welcome the Stock Exchange Council's proposals, and tell the House that, subject to approval by the Stock Exchange Membership of the necessary changes to their Deed of Settlement, and subject to the agreement of satisfactory monitoring arrangements for the period after the exclusion measures had been implemented, the Government would seek the approval of Parliament for measures to exclude the Stock Exchange from the operation of the Restrictive Trade Practices Act. It was recognised that this might involve primary legislation, but of a relatively uncomplicated nature. Your Secretary of State would clear with colleagues the terms of his reply to Sir Nicholas Goodison. His statement should be as short and free from technicalities as possible and the four last paragraphs in the present draft should have substituted for them the attached three paragraphs.

/ I

I am sending copies of this letter and enclosure to Bob Whalley (Lord President's Office), David Staff (Lord Chancellor's Office), John Kerr (HM Treasury), David Heyhoe (Lord Privy Seal's Office), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Henry Steel (Attorney General's Office), Peter Gregson (Cabinet Office) and Richard Hatfield (Cabinet Office).

*Yours sincerely,*

*Michael Scholar*

Jonathan Spencer, Esq.,  
Department of Trade & Industry.

The next step will be for the Membership to approve the necessary changes to the Stock Exchange Deed of Settlement.

I shall also make arrangements for the Department of Trade and Industry and the Bank of England to monitor the implementation of these measures, and the evolution and development of the Stock Exchange as an efficient, competitive and suitably regulated central market which affords proper protection to investors.

Subject to these two points the Government will seek approval of Parliament for measures to exclude the Stock Exchange from the operation of the Restrictive Trade Practices Acts.



DEPARTMENT OF TRADE AND INDUSTRY

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JF4033

Secretary of State for Trade & Industry

NBPM

MCS 27/7

27 July 1983

Michael Scholar Esq  
Private Secretary to the  
Prime Minister  
10 Downing Street  
LONDON  
SW1

*Dear Michael,*

STATEMENT ON THE STOCK EXCHANGE CASE

... I attach a copy of the statement my Secretary of State is making this afternoon in the House of Commons about the Stock Exchange case.

2 Copies of this letter go to the Private Secretaries of Members of the Cabinet, the Whips' Offices of both Houses, and to Sir Robert Armstrong.

*Yours sincerely,*

*Ruth Thompson*

RUTH THOMPSON  
Private Secretary

Encl



JU222

WITH PERMISSION, MR SPEAKER, I WISH TO MAKE A STATEMENT ABOUT THE CASE BROUGHT BY THE DIRECTOR GENERAL OF FAIR TRADING AGAINST THE STOCK EXCHANGE IN THE RESTRICTIVE PRACTICES COURT.

MINISTERS HAVE FOR SOME TIME BEEN CONCERNED THAT THE COURT PROCEEDINGS UNDER THE RESTRICTIVE TRADE PRACTICES ACT MAY NOT BE THE BEST WAY TO PURSUE THE MATTERS RAISED BY THE DIRECTOR GENERAL. WHILE THESE PROCEEDINGS ARE PENDING, IT IS DIFFICULT FOR THE STOCK EXCHANGE TO MAKE CHANGES TO ENABLE ITS MEMBERS TO COMPETE FOR BUSINESS WORLDWIDE. THERE IS ALSO A DANGER THAT THE LEGAL PROCEEDINGS WITHIN THE FRAMEWORK OF THE ACT MAY DAMAGE THE EFFECTIVE OPERATION OF THE STOCK EXCHANGE, WHICH REMAINS ESSENTIAL TO THE WORKING OF OUR ECONOMY.

ACCORDINGLY, THE GOVERNMENT WOULD WISH TO SEE THE MATTER SETTLED OUT OF THE COURT, IF THE STOCK EXCHANGE IS ABLE TO MAKE ACCEPTABLE CHANGES.

I DECIDED TO DISCUSS THE MATTER WITH THE DIRECTOR GENERAL AND THEREAFTER WITH THE CHAIRMAN OF THE STOCK EXCHANGE.

I EXPLAINED THAT THE GOVERNMENT HAD CONCLUDED THAT IN ORDER TO SAFEGUARD THE POSITION OF INVESTORS THE SEPARATION OF THE FUNCTIONS OF BROKERS AND JOBBERS SHOULD BE PRESERVED AT LEAST FOR THE TIME BEING IN ITS PRESENT FORM. THE HOUSE WILL RECALL THAT, IN ANALOGOUS CIRCUMSTANCES, IT INSISTED ON SEPARATING BROKERS AND UNDERWRITERS AT LLOYD'S.

THE STOCK EXCHANGE'S RULES WHICH PRESCRIBE THE SEPARATION OF CAPACITY MAY HAVE TO BE INCLUDED IN STATUTORY PROVISIONS UNDER EC DIRECTIVES. IN THAT CASE I INTEND TO MAKE REGULATIONS UNDER THE EUROPEAN COMMUNITIES ACT.

I SAID THAT I SHOULD ALSO EXPECT THE STOCK EXCHANGE TO MAKE CHANGES ON POINTS OF CONCERN TO THE DIRECTOR GENERAL.

FOLLOWING DISCUSSIONS WITH HIS COUNCIL, THE CHAIRMAN OF THE STOCK EXCHANGE HAS MADE THE FOLLOWING PROPOSALS TO ME:

THE COUNCIL WILL TAKE ACTION TO DISMANTLE BY STAGES AND WITH NO UNREASONABLE DELAY ALL THE RULES WHICH PRESCRIBE MINIMUM SCALES OF COMMISSION, COMPLETING THIS BY 31 DECEMBER 1986.

THE STOCK EXCHANGE WILL CONTINUE THE RULES PRESCRIBING SEPARATION OF CAPACITY OF BROKERS AND JOBBERS.

THE COUNCIL WILL INTRODUCE RULES TO PERMIT NON-MEMBERS TO SERVE AS NON-EXECUTIVE DIRECTORS OF LIMITED CORPORATE MEMBERS OF THE STOCK EXCHANGE, PROVIDED THAT THERE IS ALWAYS A MAJORITY OF DIRECTORS WHO ARE MEMBERS OF THE STOCK EXCHANGE.

THE COUNCIL WILL RECOMMEND TO THE MEMBERS OF THE STOCK EXCHANGE CHANGES WHICH WOULD:

FIRST, INTRODUCE LAY MEMBERS TO THE COUNCIL OF THE STOCK EXCHANGE, THEIR NUMBER AND THE METHOD OF THEIR SELECTION TO BE AGREED WITH THE BANK OF ENGLAND.

SECOND, ESTABLISH A NEW APPEAL BODY, INDEPENDENT OF STOCK EXCHANGE MEMBERS OF THE COUNCIL. IF THE COUNCIL WERE TO REJECT AN APPLICANT FOR MEMBERSHIP WHO FULFILLED THE REQUIREMENTS OF THE RULES, THE APPEAL BODY COULD REVIEW THE DECISION AND OVER-RULE IT. THIS BODY WOULD INCLUDE LAY MEMBERS OF THE COUNCIL, BUT STOCK EXCHANGE MEMBERS OF THE COUNCIL WOULD NOT BE ELIGIBLE.

THIRD, INTRODUCE PEOPLE WHO ARE NOT STOCK EXCHANGE MEMBERS OF THE COUNCIL TO THE STOCK EXCHANGE'S EXISTING APPEALS COMMITTEE ON DISCIPLINARY MATTERS SO THAT THEY WILL CONSTITUTE AT LEAST A MAJORITY ON THE COMMITTEE. LAY MEMBERS OF THE COUNCIL WOULD BE ELIGIBLE TO SERVE ON THIS COMMITTEE.

I BELIEVE THAT THESE CHANGES ARE TO BE WELCOMED, AND WOULD ENABLE THE STOCK EXCHANGE TO CONTINUE TO ADAPT IN AN EVOLUTIONARY MANNER TO CHANGING CIRCUMSTANCES WHILE MAINTAINING PROPER REGARD TO THE NEEDS AND PROTECTION OF INVESTORS.

THE NEXT STEP WILL BE FOR THE MEMBERSHIP TO APPROVE THE NECESSARY CHANGES TO THE STOCK EXCHANGE DEED OF SETTLEMENT.

I SHALL ALSO MAKE ARRANGEMENTS FOR THE DEPARTMENT OF TRADE AND INDUSTRY AND THE BANK OF ENGLAND TO MONITOR THE IMPLEMENTATION OF THESE MEASURES, AND THE EVOLUTION AND DEVELOPMENT OF THE STOCK EXCHANGE AS AN EFFICIENT, COMPETITIVE AND SUITABLY REGULATED CENTRAL MARKET WHICH AFFORDS PROPER PROTECTION TO INVESTORS.

SUBJECT TO THESE TWO POINTS THE GOVERNMENT WILL SEEK APPROVAL OF PARLIAMENT FOR MEASURES TO EXCLUDE THE STOCK EXCHANGE FROM THE OPERATION OF THE RESTRICTIVE TRADE PRACTICES ACT.



DEPARTMENT OF TRADE AND INDUSTRY

Room 11.01 Ashdown House 123 Victoria Street SW1E 6RB

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JU209

Secretary of State for Trade & Industry

Michael Scholar Esq  
Private Secretary to the  
Prime Minister  
10 Downing Street  
London SW1

26 July 1983

1) Statement - held to  
Goodison  
2) Application of 'stay'  
with rules  
3) Cases Order

Dear Michael,

RESTRICTIVE PRACTICES COURT : STOCK EXCHANGE CASE

... I enclose the draft of the statement that my Secretary of State proposes to make tomorrow. It reflects the Attorney-General's advice about what is necessary to secure the first adjournment, and also reflects points made by Sir Nicholas Goodison and his advisers to officials.

2 My Secretary of State would have liked to go further in complimenting the Director General of Fair Trading but the Stock Exchange has pointed out that if the case goes on comment from him in this sense would be prejudicial.

3 Copies go to the Private Secretaries of those attending tonight's meeting: that is, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Lord President, the Lord Privy Seal and the Attorney-General, and to Sir Robert Armstrong and Mr Peter Gregson at the Cabinet Office.

Copy in 1982  
Richardson with  
State Exchange  
Jan 1983 - significant point  
more.  
Boone

Yours ever,

Goodison  
↓  
Council  
↓  
Rules

RUTH THOMPSON  
Private Secretary

Triggs

With permission, Mr Speaker, I wish to make a statement about the case brought by the Director General of Fair Trading against the Stock Exchange in the Restrictive Practices Court.

Ministers have for some time been concerned that the Court proceedings under the Restrictive Trade Practices Act may not be the ideal way to pursue the matters raised by the Director General. While these proceedings are pending, it is difficult for the Stock Exchange to make changes to enable its members to compete for business worldwide. There is also a danger that the legal proceedings within the framework of the Act may damage the effective operation of the Stock Exchange, which remains essential to the working of our economy.

Accordingly, the Government would wish to see the matter settled out of the Court, if the Stock Exchange is able to make acceptable changes.

I decided to discuss the matter with the Director General and thereafter with the Chairman of the Stock Exchange.

I explained that the Government had concluded that in order to safeguard the position of investors the separation of the functions of brokers and jobbers should be preserved at least for the time being in its present form. Somewhat similarly, Parliament had insisted on separating brokers and underwriters at Lloyd's.

① *Objections - limited*

*Proposals that will fundamentally change case. Court - Market  
S of S - statement - is present, subjective*

The Stock Exchange's rules which prescribe the separation of capacity may have to be included in statutory provisions under EC Directives. In that case I intend to make Regulations under the European Communities Act.

I said that I should also expect the Stock Exchange to make changes on points of concern to the Director General.

Following discussions with his Council, the Chairman of the Stock Exchange has made the following proposals to me:

① The Council will take action to dismantle by stages and with no unreasonable delay all the rules which prescribe minimum scales of commission, completing this by 31 December 1986.

② The Stock Exchange will continue the rules prescribing separation of capacity of brokers and jobbers. Why?

③ The Council will introduce rules to permit non-members to serve as non-executive directors of limited corporate members of the Stock Exchange, provided that there is always a majority of directors who are members of the Stock Exchange.

The Council will recommend to the members of the Stock Exchange changes which would:

④ First, introduce lay members to the Council of the Stock Exchange, their number and the method of their selection to be agreed with the Bank of England.

Second, establish a new appeal body, <sup>independent</sup> of Stock Exchange members of the Council. If the Council were to reject an applicant for membership who fulfilled the requirements of the rules, the appeal body could review the decision and over-rule it. Lay members of the Council would be eligible for membership of both these bodies, but not Stock Exchange members of the Council.

Third, introduce people who are not Stock Exchange members of the Council to the Stock Exchange's existing Appeals Committee on disciplinary matters so that they will constitute at least a majority on the Committee. Lay members of the Council would be eligible to serve on this Committee.

I believe that these changes are to be welcomed, and would enable the Stock Exchange to continue to adapt in an evolutionary manner to changing circumstances while maintaining proper regard to the needs and protection of investors.

*The membership is to give M. ... to ...*

If the Membership approves the necessary changes to the Stock Exchange Deed of Settlement, I have it in mind to proceed by Order under the 1976 Act. In those circumstances I would seek and consider representations and thereafter, if I were satisfied, recommend to Parliament as soon as possible after the summer recess an Order amending the Restrictive Trade Practices (Services) Order 1976 to exempt the Stock Exchange from the Act, and enabling the proceedings to be discontinued.

Such an Order would be subject to Affirmative Resolution. The House will accordingly have an opportunity to debate the matter in the autumn. But it is right that the substance of the

discussions between the Stock Exchange and myself should be made known to honourable Members as soon as possible.

I <sup>shall</sup> ~~should~~ also make arrangements for the Department of Trade and Industry and the Bank of England to monitor the implementation of these measures with the continuing broad objective of sustaining and promoting the evolution <sup>and</sup> ~~and~~ <sup>future</sup> development of the Stock Exchange as an efficient competitive and suitably regulated central market which affords proper protection to investors.

I would like to take this opportunity to express to the House my high appreciation of the work done by the Director General and his staff in the preparation of the case, which has made an important contribution to the present proposals.

26 July 1983

Goodwin

Monitoring

Promote competition  
as well as  
protection

Self-regulation

Legislation



Mr Scholar.



With the Compliments  
of the  
Chancellor of the Exchequer's  
Private Secretary

Treasury Chambers,  
Parliament Street,  
S.W.1.



DEPARTMENT OF TRADE AND INDUSTRY

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JU209

Secretary of State for Trade & Industry

26 July 1983

Michael Scholar Esq  
Private Secretary to the  
Prime Minister  
10 Downing Street  
London SW1

PA

Dear Michael,

RESTRICTIVE PRACTICES COURT : STOCK EXCHANGE CASE

...

I enclose the draft of the statement that my Secretary of State proposes to make tomorrow. It reflects the Attorney-General's advice about what is necessary to secure the first adjournment, and also reflects points made by Sir Nicholas Goodison and his advisers to officials.

2 My Secretary of State would have liked to go further in complimenting the Director General of Fair Trading but the Stock Exchange has pointed out that if the case goes on comment from him in this sense would be prejudicial.

3 Copies go to the Private Secretaries of those attending tonight's meeting: that is, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Lord President, the Lord Privy Seal and the Attorney-General, and to Sir Robert Armstrong and Mr Peter Gregson at the Cabinet Office.

Yours ever,

Ruth

RUTH THOMPSON  
Private Secretary

DRAFT

With permission, Mr Speaker, I wish to make a statement about the case brought by the Director General of Fair Trading against the Stock Exchange in the Restrictive Practices Court.

Ministers have for some time been concerned that the Court proceedings under the Restrictive Trade Practices Act may not be the ideal way to pursue the matters raised by the Director General. While these proceedings are pending, it is difficult for the Stock Exchange to make changes to enable its members to compete for business worldwide. There is also a danger that the legal proceedings within the framework of the Act may damage the effective operation of the Stock Exchange, which remains essential to the working of our economy.

Accordingly, the Government would wish to see the matter settled out of the Court, if the Stock Exchange is able to make acceptable changes.

I decided to discuss the matter with the Director General and thereafter with the Chairman of the Stock Exchange.

I explained that the Government had concluded that in order to safeguard the position of investors the separation of the functions of brokers and jobbers should be preserved at least for the time being in its present form. Somewhat similarly, Parliament had insisted on separating brokers and underwriters at Lloyd's.

The Stock Exchange's rules which prescribe the separation of capacity may have to be included in statutory provisions under EC Directives. In that case I intend to make Regulations under the European Communities Act.

I said that I should also expect the Stock Exchange to make changes on points of concern to the Director General.

Following discussions with his Council, the Chairman of the Stock Exchange has made the following proposals to me:

The Council will take action to dismantle by stages and with no unreasonable delay all the rules which prescribe minimum scales of commission, completing this by 31 December 1986.

The Stock Exchange will continue the rules prescribing separation of capacity of brokers and jobbers.

The Council will introduce rules to permit non-members to serve as non-executive directors of limited corporate members of the Stock Exchange, provided that there is always a majority of directors who are members of the Stock Exchange.

The Council will recommend to the members of the Stock Exchange changes which would:

First, introduce lay members to the Council of the Stock Exchange, ~~their~~ number and the method of their selection to be agreed with the Bank of England.

Second, establish a new appeal body, independent of Stock Exchange members of the Council. If the Council were to reject an applicant for membership who fulfilled the requirements of the rules, the appeal body could review the decision and over-rule it. Lay members of the Council would be eligible for membership of both these bodies, but not Stock Exchange members of the Council.

Third, introduce people who are not Stock Exchange members of the Council to the Stock Exchange's existing Appeals Committee on disciplinary matters so that they will constitute at least a majority on the Committee. Lay members of the Council would be eligible to serve on this Committee.

I believe that these changes are to be welcomed, and would enable the Stock Exchange to continue to adapt in an evolutionary manner to changing circumstances while maintaining proper regard to the needs and protection of investors.

If the Membership approves the necessary changes to the Stock Exchange Deed of Settlement, I have it in mind to proceed by Order under the 1976 Act. In those circumstances I would seek and consider representations and thereafter, if I were satisfied, recommend to Parliament as soon as possible after the summer recess an Order amending the Restrictive Trade Practices (Services) Order 1976 to exempt the Stock Exchange from the Act, and enabling the proceedings to be discontinued.

Such an Order would be subject to Affirmative Resolution. The House will accordingly have an opportunity to debate the matter in the autumn. But it is right that the substance of the

discussions between the Stock Exchange and myself should be made known to honourable Members as soon as possible.

I should also make arrangements for the Department of Trade and Industry and the Bank of England to monitor the implementation of these measures with the continuing broad objective of sustaining and promoting the evolution and development of the Stock Exchange as an efficient competitive and suitably regulated central market which affords proper protection to investors.

I would like to take this opportunity to express to the House my high appreciation of the work done by the Director General and his staff in the preparation of the case, which has made an important contribution to the present proposals.

26 July 1983

27 JUL 1983

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Ref. A083/2210

PRIME MINISTER

Cabinet: The Stock Exchange

BACKGROUND

F The Secretary of State for Trade and Industry told the Cabinet on 21 July (CC(83) 24th Conclusions, Minute 4) that, if the Council of the Stock Exchange agreed to put forward changes in their rules and practices, he would make a statement in the House of Commons on 27 July that the Government would lay an Order exempting the rules of the Stock Exchange from the Restrictive Trade Practices Act.

G 2. The letter from the Secretary of State for Trade and Industry's Private Secretary to Mr Scholar of 22 July (copied only to the offices of the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster and the Attorney General) covers a report on developments up to the weekend and the text of a draft statement.

3. The main developments since the last Cabinet discussion are:

- (i) The Stock Exchange Council have agreed to seek the agreement of their members to the necessary changes in their rules, subject to cessation of proceedings against the Stock Exchange in the Restrictive Practices Court.
- (ii) Sir Gordon Borrie, Director General of Fair Trading, who has brought the case against the Stock Exchange, has made it clear that he will not oppose an application on 28 July by the Stock Exchange for adjournment of the case for four months.
- (iii) Sir Gordon Borrie has however reserved his position on whether, when changes in the rules have been made and Parliament has approved the exemption Order, he will oppose adjournment of the case sine die.
- (iv) The option favoured by the Attorney General last week, under which the Stock Exchange would make an entirely new agreement, thus strengthening the chances that the Court would be unwilling to pursue the case relating to the existing agreement, is now thought to be unworkable.



4. The Secretary of State for Trade and Industry will be seeing Sir Gordon Borrie shortly before the Cabinet meets. It remains to be seen whether, in the light of the decisions now taken by the Stock Exchange Council, he will feel able to indicate that he would not oppose a sine die adjournment in due course. It is also important to know whether, despite the fact that the changes in the rules are formally conditional on the cessation of proceedings, the Stock Exchange Council will be prepared to go ahead with the changes on the basis of the four-month temporary adjournment in the light of Sir Gordon Borrie's position about the issue of sine die adjournment. This in turn will determine whether the Secretary of State for Trade and Industry should go ahead with his statement. The indications before the weekend appeared to be that the Stock Exchange Council were prepared to proceed with their proposed changes on the basis of the temporary adjournment, despite Sir Gordon Borrie's position at that time.

MAIN ISSUES

5. The Cabinet will wish to judge the Secretary of State's proposals in the light of the best forecast which can be made of future events. If the Stock Exchange Council goes ahead with the changes in the rules on the basis of a four-month adjournment, if Parliament approves the exemption Order, and if Sir Gordon Borrie persists in his opposition to sine die adjournment, how is the Court likely to react? What are the chances that the Court will, despite Sir Gordon Borrie's opposition, decline to proceed with the case? If the Court continues with the case, what are the likely consequences? Is it in fact better, despite the lack of assurance that proceedings in the Court will cease, for the Stock Exchange to go ahead with its voluntary changes and for the Government to make an exempting Order? Or would it be better to allow the case to proceed in the Restrictive Practices Court without any intervention from the Government?

6. In considering these matters the Cabinet will wish to weigh the need to avoid disturbance in the securities market against the risk that Ministers may be accused of favouring City interests and of inconsistency with their general policy of seeking to promote competition and to get rid of restrictive practices.

CONFIDENTIAL

HANDLING

7. You will wish to invite the Secretary of State for Trade and Industry to give a report on the latest developments including his most recent discussion with Sir Gordon Borrie, and to say how he proposes to proceed in the light of those developments. The Chancellor of the Exchequer and the Attorney General, who has been invited for this item, may wish to comment.

CONCLUSIONS

8. You will wish the Cabinet to reach conclusions on the following matters:

- (i) whether, if the Director General of Fair Trading is determined to press the case in the Restrictive Practices Court, the Government should nevertheless seek Parliament's approval in the autumn to an Order exempting the rules of the Stock Exchange from the Restrictive Trade Practices Act;
- (ii) whether, if the Secretary of State for Trade and Industry so proposes, he should make a statement in the House on 27 July making clear the Government's intentions.

RTA

ROBERT ARMSTRONG

25 July 1983

CONFIDENTIAL



DEPARTMENT OF TRADE AND INDUSTRY

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PS/Secretary of State for Trade & Industry

22 July 1983

Michael Scholar Esq  
Private Secretary to the  
Prime Minister  
10 Downing Street  
LONDON  
SW1

G  
2  
Prime Minister

Surprising progress.

But will SE members

accept the Council's

conclusions?

*[Handwritten scribble]*

MUS 22/7

Dear Michael,

STATEMENT ON THE STOCK EXCHANGE CASE

As agreed at the Prime Minister's meeting on the Stock Exchange case on 20 July, I attach the draft statement my Secretary of State might make to the House of Commons on Wednesday, 27 July. This has been prepared by officials in this Department, in close consultation with the Law Officers' Department and with Mr Alex Fletcher; it has not yet been seen or approved by my Secretary of State or Mr Fletcher.

2 I am copying this letter and the draft statement to the Private Secretaries of the Chancellor of the Exchequer, the Attorney General and the Chancellor of the Duchy of Lancaster; and to Richard Hatfield and Mr Gregson (Cabinet Office).

Yours sincerely, *Ruth Thompson*

RUTH THOMPSON  
Private Secretary

Encl



Miss Thompson  
PS/Secretary of State for Trade and Industry

cc PS/Mr Fletcher  
Sir Anthony Rawlinson  
Mr Beckett  
Mr Dell  
Mr Bovey Sol B3  
Mr Wollman Sol A  
Mr Lowry CL1  
Mr Knight CS2  
Mr Monck Treasury  
Mr Dawkins Bank of England

I attach a draft statement on the Stock Exchange prepared in the light of events up to Friday afternoon. Sir Nicholas Goodison has just delivered the text of a resolution of the Stock Exchange on the lines that he hoped to produce. The substance is included in the statement with the parts requiring action by the Membership identified.

2 There is some indication that Sir Gordon Borrie will not oppose the adjournment of the case for four months if the Stock Exchange applies for it - as it intends - on July 28. But he has reserved his position as to an adjournment sine die at a later date. Sir Nicholas Goodison is aware of Sir Gordon's position and will probably be content for the statement to be made if we can confirm Sir Gordon Borrie's non-opposition to the first adjournment. But he will have to be given up-to-date information on Monday or Tuesday. The agreement of the Council is formally subject to the case ceasing to be subject to proceedings before the Restrictive Practices Court.

3 Sir Gordon Borrie has received advice that his statutory obligation to proceed against a restrictive trade agreement does not cease because an Order has been made exempting any corresponding agreement post-dating the Order. His strong preference accordingly is for primary legislation which would put beyond doubt the removal of the case from the Court and would emphasise the unique character of the Stock Exchange exemption. It would also protect his personal position against any possible liability stemming from his failure to perform a statutory duty. (The Department's Solicitor considers that any such anxiety is totally misconceived.) Nevertheless the announcement of a Bill would put beyond doubt the Government's ability to deliver its side of the bargain and would ensure that Court proceedings were first adjourned and subsequently dropped. I believe that the Secretary of State is seeing Sir Gordon Borrie on Tuesday. We will of course report any developments before then in his known attitude.

4 As to the substance of the agreement, the phasing out of minimum commissions by the end of 1986 is achieved. The staging is not made precise but the Council has foresworn "unreasonable delay".

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5 The Council acknowledges that separate capacity (ie separation of brokers and jobbers) shall continue and that the effectiveness of the separation will be ensured by Statutory Instrument giving effect to EC Directives. Some of the Stock Exchange legal advisers deplore specific reference to the need for an SI on this point but Sir Nicholas Goodison appears to welcome it.

6 The Director General of Fair Trading would have sought the elimination of separate capacity as a restrictive practice, but Ministers firmly decided that it was desirable as a safeguard for investors. The possibility of modification in due course is not ruled out, but it will have to be on terms acceptable to Government.

7 The rules of entry are liberalised by making the unreasonable rejection of an applicant impossible. Any individual qualified by competence, integrity, financial resources and willingness to accept unlimited liability can expect to be elected and has recourse to an appeal body whose members will not be Stock Exchange Members of the Council if he is rejected. (The members may be lay members of the Council). Lay members, comparable to those included in the LLOYD'S Council, are another innovation, and there is a clear implication that they will have a role in the disciplinary appeals committee.

8 The changes to the entry rules do not however alter the fundamental principles that membership of the Stock Exchange is limited to individuals and that it carries unlimited liability. The Director General would have sought the abolition of the rule requiring unlimited liability and if his argument had been accepted, limited companies (eg banks and American broker/dealers) would presumably have become eligible for membership. It was decided not to go for this radical change in the present negotiation though that does not preclude the possibility of pressure being put on the Stock Exchange later if in the light of further research such changes seem desirable.

9 The Stock Exchange themselves - as well as Departments and the Bank of England - attach importance to a continuous process of monitoring that will flow from these arrangements. Whether this is done within formal machinery or otherwise it is clear that Departments (and perhaps the Bank as well) will have a new and easier channel of communication and means of stimulating change. But it will also be a channel through which the Stock Exchange will be free to make representations if in its view the arrangements show signs of disrupting the market or causing other dangers. This is not merely reasonable but in the interest of Departments as well as the Stock Exchange.

10 I understand that you are sending copies of the draft statements to the offices of the other Ministers concerned. I suggest that copies of this minute should go as well since it explains some of the background and reasoning.

*M. H. M. Reid*

M H M REID  
CL  
Rm 502 S/B  
212 5962

22 July 1983

DRAFT STATEMENT BY THE SECRETARY OF STATE FOR TRADE AND INDUSTRY

I have had discussions in the last few weeks with the Chairman of the Stock Exchange about the case being brought against the Exchange in the Restrictive Practices Court by the Director General of Fair Trading. I have also of course seen the Director General.

The Chairman has told me that his Council is concerned that the processes of the Court might inhibit flexible and constructive development of the Stock Exchange. Changes may become necessary at the Stock Exchange to enable it to compete for business but it is difficult even to consider these while the present rules and practices are before the Court. In reply I have said that if the Stock Exchange is prepared to phase out minimum commissions and to liberalise the rules of entry there would be a basis for discussing whether the case might be stopped. I have made it clear that in the interest of protecting investors I should want the present trading system in which jobbers are separate from brokers to continue at least for the time being. If the Stock Exchange in due course wanted to modify it I should expect to be satisfied that proper safeguards for investors would still be provided.

The Stock Exchange Council has now endorsed the following proposals. It will take action to dismantle by stages and with no unreasonable delay all the rules which at present prescribe minimum scales of commission and complete this dismantling by 31 December 1986.

The Stock Exchange will continue the rules prescribing separation of capacity of brokers and jobbers. Under EC Directives now due to be implemented such rules may well have to be included in statutory regulations if they are to be effective. I have said that I intend to make Regulations under the European Communities Act that will include such a provision if it is found to be necessary.

The Council of the Stock Exchange will recommend to the members proposals which would have the following effects:-

- 1 The introduction of lay members to the Council of the Stock Exchange, the number and the method of their selection to be agreed with the Bank of England.
- 2 The establishment of a new appeal body, independent of Stock Exchange members of the Council, to review and if appropriate over-rule the Council's decision to reject an applicant for membership. In other words lay members of the Council would be eligible for membership of the new appeal body but not Stock Exchange members of the Council.
- 3 The introduction to the Stock Exchange's existing Appeals Committee on disciplinary matters of at least a majority of people who are not Stock Exchange members of the Council.

The Council will introduce rules to permit non-members to serve as non-executive directors of limited corporate members of the Stock Exchange, provided that there is always a majority of directors who are members of the Stock Exchange.

I believe that these changes will be very much in the public interest, and will enable the Stock Exchange to adapt to changing circumstances while continuing to have proper regard to the interests of investors.

I have told the Chairman that if the Membership ratify these proposals in the coming weeks I have it in mind subject to my statutory duty to seek and consider representations, to recommend to Parliament an Order exempting the Rules of the Stock Exchange from the Restrictive Trade Practices Act. I should also make arrangements for the Department of Trade and Industry and the Bank of England to monitor the implementation of these measures with the continuing broad objective of sustaining and promoting the development of the Stock Exchange as an efficient competitive and suitably regulated central market which affords proper protection to investors.

The legislation specifies a period for making representations and the Order is subject to Affirmative Resolution. The House will accordingly have an opportunity to express its opinion of these proposals in the autumn. But it is right that the substance of the discussions between the Stock Exchange and myself should be made known to honourable Members as soon as possible.

I understand that the Stock Exchange will apply for an adjournment of the Court proceedings while the membership is invited to give its endorsement to the changes I have outlined.

[The Director General of Fair Trading has told me that he will not oppose this adjournment].



CONFIDENTIAL

DRAFT QUESTIONS AND ANSWERS

1.Q Is the Government simply letting its friends off lightly so that they will collaborate more readily in its privatisation plans?

1.A There is no question of letting anybody off lightly. The Stock Exchange has offered the abolition of minimum commissions, has rewritten entry rules and provided for appeals from those refused entry. They have also accepted our view on the need for separating brokers and jobbers in the interest of protecting investors. These are significant moves. We are not blessing the status quo. We are giving the Stock Exchange the opportunity to prepare itself for an increasingly competitive existence.

2.Q What is so special about the Stock Exchange that it should be made exempt from the Restrictive Trade Practices Act?

2.A The Stock Exchange is not the only provider of services to which special considerations apply as regards registration of agreements under the Restrictive Trade Practices Act. The professions are exempt under the Act itself. Agreements between various financial institutions, such as insurance companies, unit trusts and institutions active in the money markets are exempt under the Services Order. A common characteristic of exempt agreements is that they are made between institutions which are already subject to statutory regulation. The extent of statutory regulation of the Stock Exchange will inevitably be greatly increased when we implement the 3 EC Stock Exchange Directives. The Stock Exchange is unique in providing a central market for securities dealings. It is in everyone's interest that this market should be sustained and promoted, so long as it remains efficient and competitive.

3.Q What has change so dramatically to justify action at this late stage to remove the case from the Court?

3.A The willingness of the Stock Exchange to commit itself to change has been the most significant change. This willingness may itself reflect a heightened awareness on the part of the Stock Exchange of commercial pressures which are already building up to compel change. We seek to facilitate change, while ensuring that competition is allowed the fullest possible rein.

4.Q Has the Government lost faith in the Restrictive Trade Practices Court?

4.A No. We have great confidence in the Court and in the Director General of Fair Trading. Paradoxically a decision - even one in the Stock Exchange's favour - might limit its ability to adapt flexibly to changing circumstances. Judicial investigation remains a sensible way for determining whether a particular restrictive agreement operates against the public interest. Rules as complex as those of the Stock Exchange are perhaps more appropriate for a different form of examination.

5.Q Is the Government satisfied of the propriety of taking action to remove a case from the jurisdiction of the Court.

5.A Certainly, if Parliament approves. We shall be proposing to ask Parliament for a change in the law by amending The Restrictive Trade Practices (Services) Order 1976 which beyond question is within its competence. It will be for the parties to the case to make representations to the Court in the light of this development. The proposals from the Stock Exchange have altered and the need to implement the EC Directives have altered the circumstances of the case.

6.Q Is the Government satisfied of the efficacy of its action in removing the case from the Court?

6.A That is a matter for the Court.

- 7.Q Has the Government been influenced by Professor Gower's views?
- 7.A I do not know his views on this matter. He tells me that he will report before the end of the year.
- 8.Q Why has the Government not sought wider access to membership and to control of member firms for non-members?
- 8.A The Stock Exchange's proposals would admit outside influence to a much greater extent than at present, and provide for independent review of a refusal to admit to membership. The extent to which fresh sources of capital and innovation should be admitted to the Exchange is a matter to be settled by evolutionary development.
- 9.Q Will the Stock Exchange not use retention of separation of capacity and barriers to entry to resist gradual abolition of commission scales?
- 9.A I do not believe so. They have proposed a firm date for the end of fixed commissions. It is because progress towards this may involve some repercussions for separation of capacity and membership conditions that we welcome the Stock Exchange's proposal for close monitoring of developments.
- 10.Q Is the Government satisfied that the Stock Exchange is sufficiently alive to external competitive challenges to survive as the central market until December 1986?
- 10.A It is the Stock Exchange's awareness of external competition that prompted the Chairman's approach to me.

22 JUL 1983

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9 8 7 2  
7 6 5 4 3

Michael Scholar ✓

REVISED NOTE

OTU



*With the compliments of*

Laurence Oates

*Attorney General's Chambers,  
Law Officers' Department,  
Royal Courts of Justice,  
Strand. W.C.2A 2LL*

01 405 7641 Extn.



and the section 11 Order could only be effective if combined with a determination of the existing registered Agreement. Without this he was under an obligation to invite the Court to consider the issue and make a declaration. With it he considered he still had a discretion. His understanding was that the same conclusion could be reached in relation to single capacity even if an Order were made under the European Communities Act. The views of the Court could be useful. Whilst he accepted the right of Ministers to form a view on single capacity in the context of the Directives that view should not be reached after insufficient enquiry and consideration. On the issues generally, the Stock Exchange had always hitherto argued that the Court was not the appropriate forum; he feared that the proposed settlement lent encouragement to that view.

In discussion Simon Brown advised that the DG's duty was to put the Case before the Court; he would not be in breach of duty in letting the Court adjourn it sine die. The Stock Exchange could argue that as it was possible for them to enter into a new Agreement which would be outside the scope of the Act it would be futile to spend time and money on the Case. There was a point of propriety as to whether the Court should be invited to embark upon an expensive foray if the Stock Exchange had prospectively been taken out of the control of the Act.

In further discussion of the detailed stages which would take place if a section 11 Order were made after the summer recess, consideration was given to what the DG's attitude should be to an application by the Stock Exchange for a temporary stay pending this event. The Attorney General suggested that the Court could require the parties to return within 7 days of the operative date for further directions. He thought it common sense that the Judge could not be invited in the interim to require the parties to spend a lot of money on the Case whilst the effect of the orders, and indeed whether the Case would ultimately proceed at all, remained unclear. The DG was

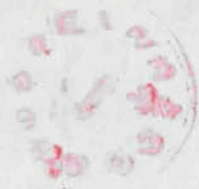
concerned at the effect of a temporary stay on the Case. It may be that he could instruct Counsel to say he was not opposing the temporary stay (he would wish to discuss this with Counsel) but he could not give any indication of what his attitude would be when the Case returned to the Court in November. The attitude of the Judge was in his view a relevant factor.

LAURENCE OATES

22 July 1983



JUL 1983



CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

20 July, 1983.

Dear Jonathan,

The Stock Exchange and the Restrictive Practices Court

The Prime Minister had a meeting this morning to discuss the next steps in the talks between the Government, the Stock Exchange and Sir Gordon Borrie. Your Secretary of State, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Attorney General, Sir Robert Armstrong and Mr. Peter Gregson were present.

Your Secretary of State said that Sir Gordon Borrie had changed his position, and was now unwilling to acquiesce in the Government's proposals for an out-of-court settlement with the Stock Exchange. In discussion, it was noted that both Sir Gordon and the Court had done much preparatory work on these matters, and were likely to be reluctant to agree to an adjournment sine die. But if a new Agreement governing the conduct of members of the Stock Exchange were promised, and a firm undertaking to that effect secured from Sir Nicholas Goodison, and if this undertaking was satisfactory to the Government, it would be possible for your Secretary of State to make a statement to the House on Wednesday next week, indicating that the House would be invited to agree, by Order, the exemption of the Stock Exchange from the Restrictive Trade Practices Act. Once such a statement had been made, the Court would be likely to be more sympathetic towards a request for adjournment sine die, since there would clearly be little profit in their ruling upon an Agreement which would shortly be superseded. The three reforms set out in your Secretary of State's minute of 12 July could be regarded as providing a broadly satisfactory basis for the Government to defend the removal of action from the Court. But the terms of the undertaking by the Stock Exchange would need to be examined very carefully, and your Secretary of State was invited to circulate to colleagues as soon as possible (before the weekend if at all possible) a draft of his statement. It would be vital to investigate very carefully all the implications of a new Agreement: in particular, the legal implications and the tax consequences. Your Secretary of State, together with the Attorney General, should arrange an urgent meeting with Sir Nicholas Goodison, to ascertain how firm an undertaking, and in what terms, he could give the Government about a new Agreement.

CONFIDENTIAL

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In further discussion, it was noted that the changes in Stock Exchange rules currently under discussion were likely to be a good deal more acceptable to the Stock Exchange than the outcome of a continuing action before the Restrictive Practices Court Act. But it might be that a number of members of the Stock Exchange would prefer a distant and greater evil to an immediate implementation of the proposed changes. If no satisfactory new Agreement was obtainable it still might be possible to persuade the court - or to do so on appeal - to a stay of action while further efforts were made to bring about a change in the Stock Exchange's rules. The alternative to this or to further action in the court would be primary legislation, for which the Government's programme had no room.

The Prime Minister said that it was agreed that your Secretary of State should conduct urgent discussions with Sir Nicholas Goodison to secure undertakings from the Stock Exchange on the basis of which your Secretary of State could make a statement on Wednesday next week. At the same time, together with the Chancellor of the Exchequer, he should carry out an urgent investigation into the feasibility and cost of such a new Agreement.

I am sending copies of this letter to Margaret O'Mara (HM Treasury), Alex Galloway (Chancellor of the Duchy of Lancaster's Office), Henry Steel (Law Officers' Department), Richard Hatfield (Cabinet Office) and Peter Gregson (Cabinet Office).

I would be grateful if you and they would give it the usual very restricted circulation.

*Yours sincerely,*

*Michael Scholar*

---

Jonathan Spencer, Esq.,  
Department of Trade and Industry.

CONFIDENTIAL

Prime Minister

2

Not very promising.

JU137

NOTE OF A MEETING ON THE STOCK EXCHANGE, 20 JULY

Mus 21/7

Those present

Secretary of State  
Attorney General  
Mr Fletcher, PUSS,DTI  
Sir Anthony Rawlinson  
Mr Beckett, Solicitors  
Mr Reid  
Mr Oates, Law Officers Dept  
(briefing meeting only)

Sir Nicholas Goodison,  
Chairman, Stock Exchange  
J R Knight, Chief Executive  
Stock Exchange  
Mr Bellamy, Counsel  
Mr A Ground, Linklaters

1 The purpose of the meeting was to bring Sir Nicholas up-to-date with the Government's position on the possible withdrawal of the Stock Exchange case from the Restrictive Trade Practices Court. In particular, it was arranged following the Attorney General's meeting with Sir Gordon Borrie, and the Prime Minister's meeting on this case, to discover whether Sir Nicholas believed the Stock Exchange would be prepared to reach a new Agreement if this course proved necessary to secure withdrawal of the case.

2 At the Secretary of State's request, the Attorney General explained that Sir Gordon Borrie was now unwilling to co-operate in withdrawing the case from the Court. The DG's counsel had advised him that he had a duty to pursue the case which he had put before the Court; while the Attorney General did not agree with this, Sir Gordon seemed adamant. The course that was open to us in these circumstances was for the Stock Exchange to make a new Agreement, embodying the changes the Government was seeking, which could be exempted by Order from the RTP legislation. In these circumstances, there would be no purpose in the DGFT pursuing the case against the current Agreement - and it had appeared from the Attorney General's meeting with the DGFT that the latter accepted this. However, the Government recognised that there would be legal and tax implications if the Stock Exchange were to formulate a new Agreement and determine their old one. It was not yet clear what these implications would be, but the Chancellor of the Exchequer believed it should be possible to assist (via the Finance Bill) on the tax aspects.

3 The Attorney General said that the choice before the Stock Exchange was either to prepare a new Agreement, or to proceed in seeking an adjournment under the old Agreement, with the risk that the Judge would accede to the DG's likely insistence that the case be proceeded with.

4 Sir Nicholas asked about the procedure that would apply if the Stock Exchange were prepared to make a new Agreement. The Attorney said that, as already envisaged, the Stock Exchange should apply to the Judge for an adjournment shortly after the

Secretary of State's statement to the House (indeed, the Court had been put on informal warning to expect such an application on 28 July). This adjournment would be for 4 months, to give time for the exemption Order, and the Order embodying the EC Directive requirements on single capacity, to come into effect. Within 7 days of that, the Stock Exchange would then return to the Judge to seek an adjournment sine die.

5 Sir Nicholas said he was concerned to establish what was meant by the term Agreement; the Agreement lodged with the OFT included the Stock Exchange's Deed of Settlement, its Rulebook, its "Yellow Book", and a number of Notices. The Attorney General asked which parts of the Agreement referred to the OFT were affected by the settlement proposed to the Government by the Stock Exchange. Mr Bellamy said that it would be necessary to amend the Deed of Settlement to allow for lay members of the Council, and lay members of the appeal panel proposed. If the Deed of Settlement were to be amended, there would be considerable tax implications which would need to be solved. The Counsel for the Stock Exchange said that he, like Sir Nicholas, had some misgivings about emerging overnight with a new Agreement which was very largely identical to its predecessor.

6 The Secretary of State said he would not be able to make any oral statement to the House before he was very confident that there would be a successful outcome to the negotiations, both in terms of a solution to the legal difficulties and, indeed, in terms of the substance of the agreement reached. He and the Attorney asked Sir Nicholas whether it was practicable for him to secure the agreement of the Stock Exchange Council to his proposals, and, if it proved necessary following further consideration by the lawyers, to a new Agreement. Sir Nicholas said that his Council was standing by for meetings from tomorrow (21 July) right through until Monday 25 July. The Council had the power to decide changes in Stock Exchange rules, and what action to take on the present Case. If there were a need to alter the Deed of Settlement, this would have to be put to the Stock Exchange members as a whole.

7 On the substance of the Stock Exchange proposals, the Secretary of State said he was very anxious to be able to assure the House that the dismantling of the minimum commission system - due to be completed by the end of December 1986 - would take place in stages, and would start shortly. It would be impossible to defend to the House of Commons any regime which meant in effect that the present system was retained until the end of that period. Sir Nicholas said it would not be feasible to do away with minimum commissions in three equal stages; it was not a simple question of step-by-step monetary reductions. He felt very strongly that it would be necessary to experiment, possibly on a sectoral basis. The dismantling of minimum commissions would be monitored by the proposed monitoring group; given the uncertain effects of abolishing them, it was impossible to plan ahead a programme for the next 2½ years. If the monitoring organisation felt that the dismantling was endangering the central market, Sir Nicholas would want then to have the ability to put a stop to it. Sir Anthony suggested that the Secretary of State might be able to assure the House on the basis of some variant of the "three equal stages" formula, perhaps by promising "substantial progress by date X". Sir Nicholas was not particularly attracted to this proposal and stressed that he could not assure the Government that the central market would

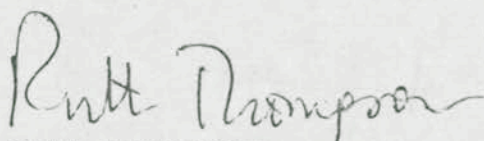
survive the phasing out of minimum commissions that was proposed. He said this, of itself, made him very anxious.

8 Mr Fletcher asked whether the proposed monitoring arrangements - to be conducted by the Government and the Bank of England - would not create presentational difficulties; it appeared that the OFT were being supplanted by the Bank. Sir Nicholas said that there was no chance that he could get this monitoring proposal through his Council without the Bank's involvement. Mr Fletcher thought the reasons for the involvement of the Bank should be made clear to the House, if not as part of the Statement, in answer to questions.

9 The Attorney General asked whether there were any other points, which had been put to the Court by the OFT, on which the Stock Exchange might be able to make concessions; this would have presentational advantages. Mr Bellamy and Mr Knight said they doubted whether anything of substance would result; nonetheless, they agreed to look at the whole range of points put to the Court by the OFT, to see whether there were any on which the Stock Exchange might be able to yield.

10 On restrictions on entry, Sir Nicholas felt that his proposals had gone as far as it was possible for the Stock Exchange to go. In answer to a question from Sir Anthony, he said that the Stock Exchange had only very recently (during the last year) changed its rules to allow banks to hold up to 30% of limited corporate members. It was not desirable to abandon all restrictions, and was premature to make changes additional to those only recently agreed. In any case, the proposed appeals committee would have a majority of non-members, to safeguard the interests of applicants.

11 The Secretary of State said he still believed that a satisfactory out of court settlement would be the least damaging way of making much-needed changes in the way the Stock Exchange functioned, while at the same time preserving the central-securities market which was an important contributor to the economy. This was one of the arguments he would use, both in the House, and when he saw Sir Gordon Borrie to inform him of the substance of the agreement reached with the Stock Exchange. This meeting - which will most probably take place *tete-a-tete* - has been provisionally arranged for Tuesday morning, 26 July, at 8.45.



RUTH THOMPSON  
PS/Secretary of State for Industry  
Rm 11.01 Ashdown Ext 3301

21 July 1983

Circulation  
Ministers and Officials present  
Mr Dell  
Mr Wollman Sol A  
Mr Lowry CL 1

Mr Scholar, No 10  
Mr Kerr, PS/Chancellor of  
the Exchequer  
PS/Attorney-General



01-405 7641 Extn

CONFIDENTIAL

2

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

Prime Minister

Meeting arranged for Wednesday.

Please see what you  
said about propriety

18 July, 1983

to Sir H Wilson (flag A). *mt*

Dear Prime Minister

MCS 18/7

STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

I have seen Cecil Parkinson's note to you.

I am satisfied that there is no impropriety in doing what is envisaged, that is to amend the 1976 Services Order prospectively to take the Stock Exchange out of the control of the Restrictive Trade Practices Act. In my view the effect of this Order would not be automatically to terminate the jurisdiction of the Court but it would render it inappropriate and futile for the Director General's proceedings to continue. It is not improper for Parliament to affirm such a change in the law.

If the Government were challenged on a change of attitude on impropriety since your letter to Sir Harold Wilson in November 1980 I think it could justifiably pray in aid the change in circumstances; namely -

- (1) the concessions now on offer by the Stock Exchange, and
- (2) the proposed regulations implementing the EC's Stock Exchange Directives.

I am copying this letter to Nigel Lawson and Cecil Parkinson.

Yours GR.  
Michael,

The Rt Hon Margaret Thatcher MP  
Prime Minister  
10 Downing Street  
London SW1

CONFIDENTIAL

Econ Pol,  
May 79  
Stock Exchange  
- Restrictive Practices Act

18 JUL 1983



COLLECTOR







However, in recognition of the problems which might arise before the Court for bodies like the Stock Exchange, we have made two major amendments to the legislation which will enable the Stock Exchange to plead their case fully and provide a period of grace for alternative proposals to be considered.

We considered whether your Committee's report provided any new justification for reversing our previous decision. We did not interpret paragraph 366 as a specific recommendation that the Stock Exchange's request for exemption be granted, but rather as a suggestion that the CSI should consider how the present rules might be modified, given your Committee's view that they could not survive in their present form. Be that as it may, our overall conclusion was that the Committee's observations did not add to the arguments for exempting the Stock Exchange from the Court which had already been put to us.

I realise, of course, that as a result of the case now pending, the Stock Exchange have argued that they feel inhibited from considering changes in their rules, particularly in those restrictions which are currently under scrutiny. I must point out that it was the decision of the Stock Exchange to defend their present practices before the Court and not to modify them, as others have done, in discussion with the Director General. However, we have made it clear to them that they are at liberty to discuss any changes in their rules at any time with the Office of Fair Trading on a without-prejudice basis. Leaving aside the restrictions actually before the Court, there is no evidence that the present proceedings are affecting the Stock Exchange's self-regulatory activity, and indeed a number of major changes have been introduced this year.

In your letter, you suggest a small ad hoc committee to consider the matters before the Court. I do not think that this would be a good idea. It would prolong uncertainty in the City and lead to further delay with no additional prospects of quick effective action. I know how strongly the Stock Exchange feel on

/ this matter.

this matter. I can assure you that their case has been considered very carefully, but so far no arguments have been advanced to justify the substantial erosion of the principles of competition - supported by both main parties since the war - that the exemption of a body very much in the public eye would cause.

Yours sincerely  
Margaret Thatcher

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The Rt. Hon. Sir Harold Wilson, K.G., O.B.E., F.R.S., M.P.



JF3920

CF  
Meeting  
1200 on  
20/7 A

CONFIDENTIAL

Prime Minister <sup>(1)</sup>

Agree a meeting on  
Wednesday, when you  
will have comments from  
the Attorney-General  
direct?

PRIME MINISTER

Yes not

STOCK EXCHANGE AND RESTRICTIVE PRACTICES COURT

I minuted you on 12 July about this matter.

Mus 15/7

2 I can now supplement that minute by sending you the attached note of proposals which Nicholas Goodison has now indicated he would be willing to recommend to the Stock Exchange Council.

3 I have also had a further discussion with the Chancellor of the Exchequer and the Attorney General. Subject to your view of the political considerations raised in my earlier minute, we are all convinced that settlement on the basis of these proposals would be better than going forward with the Court case. The Attorney General will be sending you his comments on Monday on the question of legal propriety, raised in your Private Secretary's letter to mine of 13 July. His advice is that, in the circumstances we envisage, it would be in order for application to be made to the Court on behalf of the Stock Exchange, in the first instance for a stay of proceedings for say four months, and later, when the proposed Order has been made,



for adjournment of the case sine die. It is to be hoped that the Director General of Fair Trading would acquiesce in this.

4 In so sensitive a matter we must strive to avoid premature leaks. The best way to do this is to get a statement made to Parliament before the House rises and before the end of ... the Law Term, and I attach a note on suggested procedure.

5 To implement the timetable, I hope that you may be willing to convene a small meeting of those of us most concerned next Wednesday, 20 July. The documentation would be this minute and my previous one of 12 July.

6 I am sending copies of this minute and attachments to the Chancellor of the Exchequer, the Attorney General, the Governor of the Bank of England and to Sir Robert Armstrong.

CP

C P

15 July 1983

Department of Trade & Industry  
Ashdown House  
123 Victoria Street  
LONDON  
SW1E 6RB



## MEASURES PROPOSED

The following measures are proposed.

### Abolition of minimum commissions

2 The Council of the Stock Exchange will take action to dismantle by 31 December 1986 all the rules which at present prescribe minimum scales of commission.

### Separation of capacity

3 The regulations which now have to be made by the Government to implement the EC Directives on the Stock Exchange will prescribe the continuation of separation of capacity of brokers and jobbers to the extent that the present primary Stock Exchange rules prescribe it. Changes may be made by similar amending regulations if the Government judge this appropriate in the light of the evolution of the market.

### Membership of the Stock Exchange

4 The Council of the Stock Exchange will recommend to the members proposals which would have the following effects:-

- 1 The establishment of an appeal tribunal, independent of Stock Exchange members of the Council, to review and if appropriate over-rule the Council's decision to reject an applicant for membership.
- 2 The introduction to the present Appeals Committee of at least a majority of people who are not Stock Exchange members of the Council.
- 3 The introduction of lay members to the Council of the Stock Exchange, the number and the method of their selection to be agreed with the Bank of England.
- 4 The introduction of rules to permit non-members to serve as non-executive directors of limited corporate members of The Stock Exchange, provided that there is always a majority of directors who are members of the Stock Exchange.

### Monitoring

5 Arrangements will be made for the Department of Trade and Industry and the Bank of England together to monitor the implementation of these measures, with the continuing broad objective of sustaining and promoting the development of the Stock Exchange as an efficient, competitive, and suitably regulated central market which affords proper protection to investors.



+RTA (or PG)

PROPOSED PROCEDURE

1 Tuesday 19 July. Attorney General to see Sir Gordon Borrie (already arranged).

2 Wednesday 20 July. Prime Minister to hold meeting with Secretary of State for Trade and Industry, Chancellor of the Exchequer, Attorney General and Lord Cockfield to discuss Mr Parkinson's minutes of 12 and 15 July. If it is then decided to proceed -

3 DTI to confirm to Sir Nicholas Goodison that the Government will be receptive to proposals on the lines discussed if they are adopted by the Stock Exchange Council. The Government will not make any final decision unless and until the proposals are endorsed by the Council, but if they are, the Government will consider making an Order under the Restrictive Trade Practices Act to exempt the Stock Exchange from the provisions of the Act. Such an Order will provide a basis for application to the Court on behalf of the Stock Exchange to terminate the Court case, even though it is unlikely, and not Ministers' contention, that the Order would itself achieve that end.

4 Monday 25 July. Sir Nicholas Goodison to hold a confidential meeting of the Stock Exchange Council, with no prior intimation of the meeting's purpose, and no paper circulated before the weekend. If the outcome is a satisfactory endorsement of the proposals, Sir Nicholas Goodison to inform the DTI on Monday evening.

5 Tuesday morning, 26 July. Secretary of State for Trade and Industry to inform Cabinet orally.

6 Secretary of State for Trade and Industry to make statement in House of Commons on Wednesday 27 July. Possibly simultaneous statement in Lords. Statement to announce that in the light of the commitment of the Stock Exchange Council to the proposed measures, the Government intend to make an exempting Order under the Restrictive Trade Practices Act.

7 On the basis of this statement, application by the Stock Exchange to the RTP Court for a stay of the hearing for, say, four months. This application should be made before the end of the Law Term, so that it can be to the RTP Court itself, rather than a vacation judge. The application is at this stage only for a temporary stay, since the Order has not yet been made. But a stay is necessary to stop work on preparation for the hearing, in particular on the documentation at present due in October.



8 During the Recess the Stock Exchange Council proceed as quickly as convenient to secure the agreement of membership as a whole of the Stock Exchange which is necessary for the changes proposed concerning rules of membership. (There may be difficulty in completing within the timescale all the legal complexities of changing the Deed of Settlement. A suitable resolution passed by the appropriate three quarters majority could be accepted as sufficient to justify the next step of making the Order (para 10). DTI lawyers advise that in accordance with Acts of 1799 and 1922, the formal procedure of changing the Deed of Settlement will require inter alia the consent of the Government of the Irish Republic.)

9 Also during the Recess, the Secretary of State for Trade and Industry seeks public representation on the proposed Order under the Restrictive Trade Practices Act with a view to making the Order when Parliament returns, always provided that the Stock Exchange has completed their action first.

10 When Parliament returns, the Order is made (after appropriate debate), and also Orders under EC Act to entrench certain Stock Exchange rules, including those prescribing single capacity as to implement EC Directives.

11 On the basis of these Orders, Stock Exchange apply to the Court for adjournment of the case sine die.

15 July 1983



CONFIDENTIAL



FILE

W7.

10 DOWNING STREET

*From the Private Secretary*

13 July, 1983

STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

Your Secretary of State minuted the Prime Minister on 12 July about the Stock Exchange and the Restrictive Practices Court.

6A The Prime Minister would be grateful if your Secretary of State would let her know what the Law Officers' views are on the legal aspects of the question of the propriety of action to remove the case from the Court.

M. C. SCHOLAR

J. Spencer, Esq.,  
Department of Trade and Industry

CONFIDENTIAL



PRIME MINISTER

Prime Minister

①

Agree a negotiated settlement  
and withdrawal of the case from  
Court?

Or would you like a discussion?

STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT

MS 12/7

You will recall that I mentioned to you discussions that I proposed to have with the Chancellor of the Exchequer and the Governor of the Bank of England about how to deal with the restrictive practices in the Stock Exchange which are currently being challenged in the Restrictive Practices Court by the Director-General of Fair Trading. I understand that before the Election Arthur Cockfield and Geoffrey Howe discussed the prospect of negotiating an agreement with the Stock Exchange which would allow the case to be withdrawn from the Court. I took the matter up again with Nigel Lawson and first the old, then the new, Governor. I have now had preliminary discussions with both Sir Gordon Borrie and Sir Nicholas Goodison. This minute will explain to you more fully how we might proceed.

2 You will recall that the Director-General brought to the Court some while ago a challenge on (a) minimum commissions; (b) "single capacity" - the prohibition of brokers (agents) acting as jobbers (principals) and vice versa - and (c) barriers to entry. The Court hearing is now scheduled for the turn of the year.

3 The Stock Exchange have hitherto been determined to defend the



status quo. The Government's position, determined essentially by John Nott in 1979 (and reflected in his statement to the Commons on 23 October 1979 - Hansard extract attached) has been that, while they have the power to intervene, they were not persuaded of the need to do so. There has nonetheless been widespread recognition that the Court is not an ideal place to deal with these issues.

4 New factors have now appeared. One is that Sir Nicholas Goodison has come to accept the necessity of some changes, and is prepared to negotiate. Preliminary discussions with him suggest the possibility of a settlement with the following elements:

a minimum commissions would be abolished, over a transitional period of time to be negotiated;

b single capacity would stay; but - and this has become Sir Nicholas Goodison's major concern - would not be frozen in its present form;

c an independent appeals procedure for admissions cases, plus some other relaxation of barriers to entry.

5 Before the Election Geoffrey Howe, Arthur Cockfield and the Governor had all agreed that the right course would be to pursue a negotiated commitment from the Stock Exchange to changes on these lines. If a satisfactory commitment can be obtained, then



- and only then - we would take action to remove the case from the Court.

6 Having now been over the ground thoroughly, Nigel Lawson, the new Governor and I believe that - in principle - this is the right course. It is our view that a negotiated solution will be welcomed not only by the Stock Exchange, but by the City generally. We believe that it is the best way to bring about constructive changes of the kind desired, while minimising risks to the structure of our central Stock market. Sir Gordon Borrie, Director of Fair Trading, will not like it, but I think he will accept it as a decision which Ministers may legitimately take; and in a real sense the changes which the Stock Exchange will make can be presented as resulting from his initiative and action.

7 Before reaching any decision, however, we need to look at this approach alongside the letters (copies attached) which you wrote to Sir Nicholas Goodison on 20 November 1979 and to Sir Harold Wilson on 10 November 1980, defending the decision taken at that time that the case should proceed. Other Ministers have written publicly in a similar vein, including most recently Gerry Vaughan's letter of 26 April 1983 to Ian Wrigglesworth (copy attached).

8 Your letters raise two important issues.



i you suggested that the case could not be withdrawn from the Court unless there were developments in the rules and practices of the Stock Exchange. There is a case for saying that there is now the prospect of securing the desired changes by negotiation.

ii You pointed to the question of propriety of action to remove the case from the Court. This is a more difficult point to answer. Essentially the answer would have to be that circumstances have changed since the case was brought, and since this Government's previous decision to let it run. The main factors are, first, that Stock Exchange leaders now accept the need for change, not only because of the pressures of competition policy, but because they recognise that commercial pressures are urging them in the same direction. Second, we have to implement EC Directives dealing with the listing of securities on the Stock Exchange and the duties of listed companies; recent decisions by the European Court oblige us to give effect in law to much that we had originally looked to achieve by less formal means. This will involve legislating on matters hitherto within the discretion of the Stock Exchange, and a major transfer of sovereignty from the Exchange to Government, to an extent which in other areas (for example, professions) has been deemed ample to exclude them from Restrictive Trade Practices legislation.



9 To summarise, the Chancellor, the Governor and I are all agreed that a negotiated settlement would be better. It would avoid the risk of decisions by the Court which might be so disruptive of the Stock Exchange that it might be necessary to intervene at that stage by means of legislation, which would be still more politically difficult than the action we are proposing now. But you may feel that the difficulty of departing from the position adopted in your letter of 1980 - particularly on the question of propriety - is decisive. If so, we would call off the current negotiations and let the case proceed. You may want to discuss this with me. You may also want to seek the Law Officers' views on the legal aspects of the propriety point.

10 If you decide that we should go on with the negotiations, it still remains to be seen whether Sir Nicholas can produce an offer which we judge is adequate to justify removing the case from the Court. I hope this week to get a sufficiently definitive response from him, which I would discuss at once with the Chancellor of the Exchequer and the Governor. In these circumstances, you may want to bring some or all of our colleagues into the picture. It would then be desirable, to avoid the risk of leaks, to make an early, highly provisional statement of our intentions (contingent on endorsement by the



Stock Exchange as a whole) before the House rises and before the end of the Law Term.

CP.

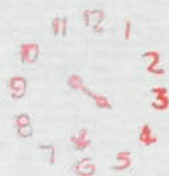
C P

12 July 1983

Department of Trade and Industry

COPIED FROM

2 JUL 1983





take six months and could possibly be extended to nine months, could have been taken by a different body.

We considered the possibility of creating a new body for this purpose. We considered asking the Exchequer and Finance Department to carry out this work but we came back to the Monopolies and Mergers Commission as being the most suitable body in a new form to conduct this kind of efficiency audit. The Commission already has experience of investigating large monopolies and in its new form we thought it would be the best way to build up experience in this very important and important field.

I am anxious not to overburden the Monopolies and Mergers Commission immediately with a great weight of new investigations. It must have time to develop its practice and build up experience.

**Mr. Hugh Dykes (Harrow, East):** May I take my right hon. Friend from the public sector back to the industries to which he was referring when the hon. Member for Norwood (Mr. Fraser) interjected earlier—that is, those which practise self-regulation. This is a very important matter because there is a possibility of amending the existing Act to allow a finding from having immediate effect in the court. I welcome that possibility and the Secretary of State's promise to draft an appropriate amendment. For example, if it appears in due course that adequate regulation is put at risk by the Stock Exchange's practices being investigated, as they are now, will he reconsider the stance he has adopted to lay an exemption order? The Stock Exchange has already officially requested that this should be done.

**Mr. Nott:** I realise that this is an important question. I shall come to the Stock Exchange in a moment and answer the hon. Friend's point then. I understand his concern.

**Mr. Stephen Dorrell (Loughborough):** Would my right hon. Friend deal with the point that I raised in the debate in July when I asked him why the Government want to limit the section 11 powers in the public sector? Are there not also private sector monopolies in which the Government has just as much at stake? Will the Government consider extending that

power to cover some parts of the private sector as well?

**Mr. Nott:** I noted my hon. Friend's remarks in that debate and I have re-read them. However, if there is a monopoly operating in the private sector it is subject to the existing legislation embodied in the Fair Trading Act. If a particular firm indulges in an anti-competitive practice, it will be subject to investigation under the clauses in this Bill if the Director General of Fair Trading considers that such a situation exists.

In this Bill we are treating the public sector and the private sector exactly alike. I have been asked why we have gone further and instituted what I might call an efficiency audit for the public sector but not for the private sector. The answer to that is exactly as I have just given it. There is a fundamental difference between a statutory monopoly which under legislation normally has been given a right—such as the Post Office, whose monopoly we would like to reduce—and a private sector firm. A statutory monopoly does not have the same sanctions of bankruptcy and it is unlikely to be taken over by a large private firm. Because of the fundamentally different nature of these activities we believe that the additional procedure is required which is not relevant in that sense to the private sector where monopolies do not exist, or if they do, we have procedures for undoing them.

I shall refer briefly to the way in which we hope to strengthen the Monopolies and Mergers Commission. I am trying to develop this speech a little because I was criticised for being brief last time. Therefore, I am anxious now to make a reasonable but not long contribution. I have had a number of talks with the chairman of the Monopolies and Mergers Commission and with his full agreement I hope to appoint one, or, if possible, two deputy chairmen on more of a full-time basis than hitherto. The chairman is also anxious to co-ordinate more closely the several groups working on reports. He is setting up a co-ordinating committee of senior members for this purpose. The Commission has recently recruited a small nucleus of highly qualified senior staff to conduct the new investigations and recently we have appointed a new secretary as the official head of the Commission.

I accept and agree that the new procedures require, in some parts of the Commission's activities, a rather different kind of approach and I believe that the chairman is now moving in that direction.

There is a further point relating to the comments made by my hon. Friend the Member for Harrow, East (Mr. Dykes) about the Stock Exchange agreement, which has been referred to the Restrictive Practices Court under the Restrictive Trade Practices Act. Several months ago the Stock Exchange requested that its agreement should be removed from the scope of the legislation on the ground that the Restrictive Practices Court is not an appropriate body to investigate its activities. There has been a considerable amount of correspondence between Ministers and the Stock Exchange and a great weight of evidence has passed between us.

I regret to tell the House that I cannot meet the request of the Stock Exchange. However, I am concerned that adequate regulation of the security markets should be preserved. I recognise the value of self-regulation in which the Council of the Stock Exchange has a central role to play. I believe that the amendment to the Act to which I referred earlier, and which will give this breathing space following the announcement of the finding by the court, may be of help to the Stock Exchange should the court make certain findings at the end of its investigation. However, the small amendments I am making to the court's arrangements will apply across the board.

We must not assume that the Restrictive Practices Court is not as capable as other bodies of making a sensible finding in the public interest. There has been a feeling that this court will not consider the public interest. We must see what happens. I do not think those fears are justified.

**Mr. Dykes:** If the principle of adequate regulation to which the Minister has already paid tribute were put at risk by these processes in the months ahead, would he reconsider his decision not to lay an exemption order?

**Mr. Nott:** The power to lay exemption orders is part of the law. Any Minister is always open to considering anything. I do not intend to lay an exemption order

[Mr. Nott.]

and I have made that clear. I have said that I cannot meet the request of the Stock Exchange. However, clearly I am always prepared to receive representations about exemption orders, and if some dramatic situation arises I shall be willing to see my hon. Friend at any time.

**Mr. Jay:** As the right hon. Gentleman has referred to the Stock Exchange, will he make clear how the legislation will affect the professional services generally? Will restrictive practices in the legal or medical professions be covered? If not, how does the Bill exclude them?

**Mr. Nott:** In the last resort it will not be the judgment of Ministers—they are not excluded. The Director General of Fair Trading will normally consider it more appropriate that professional services such as those referred to by the right hon. Gentleman should be subject to investigations through the existing procedures under the Fair Trading Act and the Monopolies and Mergers Commission investigation. The Director General has the power to use the new procedures, but I believe that he is more likely to use the existing arrangements under which some of the learned professions and others have already been looked into by the Monopolies and Mergers Commission.

**Mr. D. N. Campbell-Savours** (Workington): With reference to clause 11, will the right hon. Gentleman tell me in which subsection I will find a reference to the legal profession?

**Mr. Nott:** With respect to the hon. Gentleman, I believe that he has the wrong clause. Clause 11 is concerned with what I have described as the efficiency audit of the public sector bodies. I fear that the hon. Gentleman will have to look at the Fair Trading Act, which lists all the bodies. In this measure all we have done is to add the water and bus undertakings and the agricultural marketing boards to a list which is already included in the Fair Trading Act.

I turn to the abolition of the Price Commission. I should tell the hon. Member for Norwood that it is no use searching in our policy for a modified system of price control; it does not exist. Nor does the pre-notification of prices and the associated paraphernalia of a great bureaucracy which employed

over 500 persons and which would have cost nearly £8 million this year and led to countless burdens on British industry and commerce. For what purpose did it exist in the past? The right hon. Member for Birmingham, Sparkbrook (Mr. Hattersley) assured us that the Price Commission was not an agency for holding down the RPI. Indeed, its powers were limited to deferring price increases and it performed that role successfully and visibly—not for political purposes—in the period leading up to the election.

The previous Government's counter-inflation policy rested not on price control but on voluntary pay controls negotiated with the TUC. The TUC wrote the Government a letter and that letter was incorporated in a White Paper. Through that White Paper the letter from the TUC became the law.

**Mr. John Smith:** If it is a bad idea to attempt to investigate price increases, will the right hon. Gentleman explain why in clause 13 such a power is included to refer to the Director General an increase in prices? Will he explain to the House what is the point of the Secretary of State having the power to refer a price increase for investigation when it is clear from the face of the Bill that he has no powers to act upon that reference, even if it is discovered to be against the public interest?

**Mr. Nott:** The right hon. Gentleman asks the question at precisely the right moment. Clearly it is a good question. Clause 13 enables the Government to ask the Director General of Fair Trading to produce a report where, as defined in clause 13, there is a matter of "major public concern" and the Secretary of State considers it to be of general economic importance or special significance to consumers. We do not intend to use that power in any but the most exceptional circumstances. If that power did not rest in the Bill, the power to conduct an investigation of that sort—as the right hon. Gentleman says, there are no sanctions attached to it—would probably be given by any Government to an ad hoc board. If the Government wish to investigate a particular case they will do so. However, I do not want the Government to be in the business of setting up ad hoc boards to investigate matters of this sort. I prefer to keep such investigations

within the context of whereby no powers are attached to less the reports produced. General show up competitive practices relevant powers of t

**Mr. John Smith:** reasonable price increase under clause 13. Will the State receive a report from the Director General of Fair Trading that there has been a price increase, what report? Will he pay for it? What can he do

**Mr. Nott:** The purpose is to illuminate the speech I said that if the hon. Member is looking for controls and sanctions which he is familiar with. The reason clause 13 is there, that, being a realist, I thought that it was necessary to have an investigation to take place in the context of competition policy. The setting up of such boards by Governments which are conducting such illuminating investigations outside competition policy was revealed in the context of competitive practice. The Director General, if he thought it was in the public interest—would he have to refer to the Monopolies and Mergers Commission a full report. From that report the hon. Member would know what would flow.

**Mr. Ioan Evans** (Aberdeen): The purpose of the Price Commission is to have price restraint brought about. If the hon. Member were seeking what the right hon. Gentleman says, the price would increase by leaps and bounds. Will he leave the matter to the hon. Gentleman and that the Government should not intervene?

**Mr. Nott:** That leads to a number of areas. While the hon. Member's Government were in power, the Price Commission, the value of the pound, the value of the pound, the bureaucracy existed for the deferment of the hon. Gentleman but is the hon. Gentleman in the House and the country

RECEIVED IN  
21 NOV 1979  
SECRETARY OF STATE FOR  
TRADE'S OFFICE



10 DOWNING STREET

THE PRIME MINISTER

20 November 1979

*Mr. CUPSTEAD*  
*PS/MOS(CA)*  
*PS/RUS(CA)*  
*P/SECRETARY*  
*MR. BARBER*  
*MR. BYRNE*  
*MR. SPENCER*  
*MR. HOBSON*  
*SOS. TO SEE*

*3726 70*  
*16*  
*T. H. H. H.*  
*Hobday*

*Dear Nicholas,*

Thank you for your letter of 6 November about the decision not to remove the Stock Exchange from the scope of the Restrictive Trade Practices legislation.

I am sorry that you are so disappointed about this decision. But I can assure you that it was taken only after the most careful consideration. The legislation does of course include the power to lay an exemption order; and as John Nott made clear in the House, we would be prepared to consider granting exemption to the Stock Exchange if circumstances radically changed. Moreover, we are very much concerned that adequate regulation of the securities market should be preserved and we recognise that the Council of the Stock Exchange has a central role to play in this. It is for this reason that we intend to amend the Restrictive Trade Practices Act to permit the Court to suspend the effects of an adverse judgement so that the parties to a case can be given time to revise their agreement in the light of the Court's findings. The necessary amendments, which I understand have now been shown to you in draft, should reduce the possibility of any disruption to the securities market which might result if an adverse judgement entered into effect immediately.

/With regard

*922*

With regard to your second point about consultation, I gather that you discussed your request for exemption with Sally Oppenheim on 22 May. An extensive exchange of views between departments and the Bank of England followed, based on the memorandum which accompanied your request and on the discussions which you had with Sally. The matter was subsequently considered at length by Ministers. Finally, I gather that John Nott gave you prior notice of the proposed announcement when he saw you on 16 October. In all fairness, I do not think it can be argued that Ministers failed to consult you.

Yours ever

Richard

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N.P. Goodison, Esq.



From the  
Minister of State for Trade  
Minister for Consumer Affairs

DEPARTMENT OF TRADE  
1 VICTORIA STREET  
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01 215 5662  
SWITCHBOARD 01 215 7877

Ian Wigglesworth Esq MP

26/12 April 1983

*Dear Ian*

You wrote to Arthur Cockfield on 18 March on behalf of Mr Ronald Frake of Spencer Thornton and Co concerning the action in the Restrictive Practices Court against the Stock Exchange.

As you may know, these proceedings are being brought under the Restrictive Trade Practices Act 1976. This Act places a duty on the Director General of Fair Trading to refer agreements registered under the Act to the Court. The Court then considers whether or not the restrictions in the agreements are contrary to the public interest in accordance with criteria (termed 'gateways') specified in the Act. Since the rule-book of the Stock Exchange contains restrictions to which the Act applies, the Director General was under a statutory duty to refer it to the Court.

The Exchange requested an exemption from the Act but, as John Nott (then Secretary of State for Trade) explained in the House on 23 October 1979, the Government could not agree to this. We fully recognise the value of self-regulation and the role of the Council of the Stock Exchange in regulating the security market. But this in itself does not justify exempting the Exchange from the normal procedures under the Act for assessing restrictive agreements. I am sure that the Exchange will deploy before the Court the arguments put by Mr Frake about single capacity and investor protection, and I see no reason to think that the Court, which consists of a Judge assisted by lay members selected for their expert knowledge, is not as capable as any other body of making a sensible finding on the public interest.

Should there be any new developments, we will, of course, be prepared to reconsider the question of exemption. But at present I see no reason to change the view taken by John Nott in 1979.

*Yours*

Copies to:

Mr Mantle (on file)  
Mr Louth CL

Gerard Vaughan



PA

RECORD OF A DISCUSSION BETWEEN THE CHANCELLOR, THE SECRETARY OF STATE FOR TRADE AND INDUSTRY, AND THE GOVERNOR OF THE BANK OF ENGLAND ON THE STOCK EXCHANGE AND THE RESTRICTIVE PRACTICES COURT: 3PM, 23 JUNE, NO 11 DOWNING STREET

Present:

Chancellor of the Exchequer	Mr Parkinson	Governor
Mr Middleton	Mr Fletcher	Mr Walker
	Sir A Rawlinson	

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The meeting considered the paper by officials circulated with Mr Parkinson's letter of 16 June.

2. Mr Parkinson said that he accepted the decision, taken at a similar meeting on 6 May, that it would be right to take action to withdraw the Stock Exchange case from the Restrictive Practices Court provided that the Stock Exchange accepted that single capacity was to be enjoined in legislation, minimum commissions were to be abolished, and membership restrictions were to be limited to those necessary to ensure sufficient competence, probity, and financial resources. He would be content to inform the Director-General of Fair Trading of this decision, and to seek his agreement that if the Stock Exchange accepted it, the Restrictive Practices Court case could be adjourned sine die. But he was concerned that the Stock Exchange Council, and membership, should have agreed to make the necessary changes before an Order was put to Parliament.

3. The Governor said that he thought the 6 May decision entirely right, but that it would be right to show a measure of flexibility in negotiating with the Stock Exchange Council the modalities, and timing, of the implementation of the 3 central principles. In subsequently monitoring their application, it would also be necessary to take account of the effects of market forces, including international competition: one should not try now to set arrangements in concrete for all time.



4. The Chancellor said that he too thought the 6 May decision essentially correct. It was however not certain that the Stock Exchange would accept the deal on offer, and he agreed with Mr Parkinson that it would be difficult to proceed with legislation if they did not. Moreover, it was important to be clear about the public explanation of the Government's reversal of the 1979 decision to let the case take its course in the Restrictive Practices Court. One could point to the EC Directives, but it would be important also to be able to say that the Stock Exchange had changed its position. This pointed to the desirability of conducting the first stage of the negotiations with the Stock Exchange (paragraph 13 of the paper by officials) in strict confidence.

5. In further discussion, it was suggested that there was strong evidence that the Stock Exchange Chairman would be very willing to negotiate; and good reason to believe that a deal struck with the Council would - while the threat of proceeding with the case remained - be accepted by the membership. It was also noted that Mr Parkinson had discussed the proposed course of action with the Prime Minister, who was in general content; and that discussion with the Law Officers need not take place until preliminary negotiations had taken place: if an agreement seemed likely, the question for the Law Officers would be the narrow one of whether primary legislation would be required.

#### Next Steps

6. It was agreed that, on the basis of a negotiating brief to be urgently prepared by DTI (and cleared with the Bank and Treasury) the Secretary of State would, if possible during the first week of July, talk first to the DGFT, and then - assuming the DGFT's acquiescence - to the Stock Exchange Chairman. DTI officials would be in the lead in follow up negotiations. If it became clear that progress was being made, an interim adjournment of the Court Hearings would be sought. The aim would be to move as fast as possible with the Stock Exchange Council.



7. It was agreed that a further meeting of the present group might be appropriate by mid-July.

*JOK*

J O KERR

24 June 1983

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Distribution

Chief Secretary  
Financial Secretary  
Economic Secretary  
Mr Middleton  
Mr Cassell  
Mr Monck  
Mr Pirie

PS/Secretary of State for Trade & Industry  
PS/Mr Fletcher (DTI)  
PS/Governor, Bank of England





RECORD OF A DISCUSSION BETWEEN THE CHANCELLOR,  
THE SECRETARY OF STATE FOR TRADE, AND THE  
GOVERNOR OF THE BANK OF ENGLAND ON THE STOCK EXCHANGE  
AND THE RESTRICTIVE PRACTICES COURT:  
10.30 A.M., 6 MAY, NO.11 DOWNING STREET

Present           Chancellor of the Exchequer  
                    Mr Middleton  
  
                    Lord Cockfield  
                    Mr P A R Brown  
  
                    Governor  
                    Mr Walker

---

The meeting considered the paper by officials circulated with the Chancellor's letter of 26 April to Lord Cockfield. It was agreed that the Restrictive Practices Court proceedings would be an inappropriate way of deciding the Stock Exchange issues in question. The Stock Exchange were at least in part to blame for the way events had moved, for they had failed to apply for the exemption which they might have obtained under the Fair Trading Act 1973. The Government had in 1979 considered the option of making an order adding the Stock Exchange to the list of exceptions to the Restrictive Trade Practices (Services) Order 1976: this option had then been rejected on political grounds, which would remain valid unless the substantive issues in question were seen to be resolved in a manner which would command public support.

2. It was noted that three new EC Directives, governing various aspects of the securities market, had - in theory - to be implemented by 30 June, and that this would require detailed legislation. One effect would be to remove single capacity from the restrictions under examination by the Restrictive Practices Court: the other two groups of restrictions (minimum commissions and membership requirements) would however remain before the Court. To use secondary legislation under the European Communities Act to settle the issue of single capacity would be unsatisfactory; and separate primary legislation would be required to deal with the other issues. In short, legislation on the Directives was a complication, rather than the mechanism for a solution.



3. On the substantive issues, Lord Cockfield suggested that the Government's aims should be:-

- a. to accept, and indeed enforce, single capacity;
- b. to secure the abolition of minimum commissions, the continuation of which conflicted with policies being pursued throughout the economy; and
- c. while accepting the need for proper qualification, to secure the abolition of membership restrictions as such, thus bringing the stock-broking profession in line with the legal, accountancy, and other professions.

Lord Cockfield noted that a regulatory system to deal with minor restrictive practices would also be required. Primary legislation dealing with the three key issues in the manner proposed would be politically acceptable; and the announcement of the Government's intention to proceed with such legislation would bring the Restrictive Practices Court case to an end.

4. It was agreed that a period of very private discussion with Stock Exchange representatives would be necessary to establish whether a settlement on these lines would be acceptable to them. The suggestion was made that the impending Court proceedings would give the Government considerable negotiating leverage in such discussions; though it was also felt that many in the Stock Exchange were now ready for sweeping changes, and it was indeed suggested that those less ready to contemplate such changes might feel that the outcome of the Court proceedings, if they went ahead, would be unlikely to be anything as sweeping.

5. The next step should be for Treasury and DOT officials, in consultation with the Bank, to produce, as a matter of urgency, a draft negotiating brief. Whether to enter into direct negotiations, or seek to find a satisfactory intermediary, would be for further consideration; and the present meeting would reconvene when the draft brief was available. Whatever their form, it would be desirable that negotiations be conducted very privately, though it was noted that the DGFT would have to be told of the Government's intentions, and that it was unlikely that total secrecy could be maintained.

A handwritten signature in dark ink, appearing to read 'J O Kerr'.

J O KERR

9 May 1983



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ECON-POL  
CC/D/T  
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CF. to note  
Will keep

10 DOWNING STREET

THE PRIME MINISTER

10 November, 1980

Dear Sir Harold

Thank you for your letter of 17 October about the Stock Exchange's request for exemption from the restrictive trade practices legislation.

The Stock Exchange's Rules involve significant restrictions on competition of a kind which have been scrutinised in the past by the Restrictive Practices Court. You may recall that when the previous administration decided to extend the restrictive practices legislation to virtually all services in 1976, they did not include the Stock Exchange's Rules in the list of exemption agreements. In the circumstances, the Director General of Fair Trading was under a legal obligation to refer the restrictions to the Court and this he did in February 1979. When we assumed office, we re-examined the Stock Exchange's request for exemption. We decided on balance, however, that such action would not be justified. Other City institutions of a similar self-regulatory nature who are caught by the legislation and who, I understand, are discussing their agreements effectively with the Director General, have not sought exemption. Moreover, for the Stock Exchange to be granted exemption would in no way absolve them from the requirements of EC competition rules. Indeed, we have reason to believe that the European Commission would start investigations fairly promptly if the Restrictive Practices Court ceased to have jurisdiction in this field.

A further factor in our decision is the difficulty - and the propriety - of removing a case from the Court once it has begun.

/ However, in

Rth

However, in recognition of the problems which might arise before the Court for bodies like the Stock Exchange, we have made two major amendments to the legislation which will enable the Stock Exchange to plead their case fully and provide a period of grace for alternative proposals to be considered.

We considered whether your Committee's report provided any new justification for reversing our previous decision. We did not interpret paragraph 366 as a specific recommendation that the Stock Exchange's request for exemption be granted, but rather as a suggestion that the CSI should consider how the present rules might be modified, given your Committee's view that they could not survive in their present form. Be that as it may, our overall conclusion was that the Committee's observations did not add to the arguments for exempting the Stock Exchange from the Court which had already been put to us.

I realise, of course, that as a result of the case now pending, the Stock Exchange have argued that they feel inhibited from considering changes in their rules, particularly in those restrictions which are currently under scrutiny. I must point out that it was the decision of the Stock Exchange to defend their present practices before the Court and not to modify them, as others have done, in discussion with the Director General. However, we have made it clear to them that they are at liberty to discuss any changes in their rules at any time with the Office of Fair Trading on a without-prejudice basis. Leaving aside the restrictions actually before the Court, there is no evidence that the present proceedings are affecting the Stock Exchange's self-regulatory activity, and indeed a number of major changes have been introduced this year.

In your letter, you suggest a small ad hoc committee to consider the matters before the Court. I do not think that this would be a good idea. It would prolong uncertainty in the City and lead to further delay with no additional prospects of quick effective action. I know how strongly the Stock Exchange feel on

/ this matter.

this matter. I can assure you that their case has been considered very carefully, but so far no arguments have been advanced to justify the substantial erosion of the principles of competition - supported by both main parties since the war - that the exemption of a body very much in the public eye would cause.

Yours sincerely  
Margaret Thatcher

---

The Rt. Hon. Sir Harold Wilson, K.G., O.B.E., F.R.S., M.P.



*From the Secretary of State*

N Sanders Esq  
10 Downing Street  
London SW1

5 November 1980

Dear Nick,

STOCK EXCHANGE: RTP LEGISLATION

I enclose a draft reply for the Prime Minister to send to Sir Harold Wilson in reply to his letter of 17 October about the Stock Exchange and the Restrictive Practices Court.

Sir Harold's letter has doubtless been prompted by the Stock Exchange, who have claimed that the Wilson Report endorsed their long-standing demand for exemption from the RTP legislation. However, whether because of differing opinions in the Committee or because the case was sub judice, the relevant section of the Report was obscurely worded. It concluded (paragraph 366) that despite the amendments to the RTP legislation made by the Competition Bill, the Restrictive Practices Court was not well designed to consider alternatives to the restrictions currently under scrutiny. It also doubted whether the present system could continue without substantial change, regardless of the Court's decision. Because of the Stock Exchange's unwillingness to do anything which might weaken their legal position, it suggested that the Council for the Securities Industry should undertake consideration of alternatives to the current restrictions. However, it did not in turn recommend that the Stock Exchange's request for exemption should be granted, and the implication in Sir Harold's letter that it did so recommend is not necessarily supported by a reading of the text. We have reason to believe that the Committee would not have been unanimously in favour of exemption for the Stock Exchange.

Sir Harold, as a suggestion of his own, puts forward the idea of a small ad hoc committee to look at the Stock Exchange's restrictions. While this would undoubtedly be attractive to the Stock Exchange, such a body's recommendations could have no legal force, and if they were to be rejected by the Stock Exchange the Government would have no power to enforce them short of primary legislation. My Secretary of State informed the Stock



*From the Secretary of State*

Exchange in August that, while he had not ruled out completely the possibility of exemption, he did not consider that the Wilson Report justified transferring the case to the Monopolies and Mergers Commission or to any other forum. He also warned the Stock Exchange that the EC Commission would be likely to investigate them fairly promptly if their case was withdrawn from the Restrictive Practices Court. He encouraged them to discuss possible changes to their rules with the Office of Fair Trading on a "without prejudice" basis, but they have resolutely declined to pursue this course so far.

We understand that the Stock Exchange are discussing with the Bank of England the various changes recommended in the Wilson Report and it is conceivable that the outcome of such discussions (if reflected in changes to the Stock Exchange's rules) might produce a new situation in which the need for Court proceedings could be reconsidered. However, this is a matter which can only be considered in the light of any specific proposals from the Stock Exchange. In the meantime, while the need to defend their case before the Court is clearly a nuisance to the Stock Exchange, we have no evidence that the current proceedings are seriously inhibiting their self-regulatory activities.

I am copying this letter and enclosure to Richard Tolkien.

*Yours ever,*

*Nicholas McInnes*

N McINNES  
Private Secretary

**DRAFT**

Addressed to:

Rt Hon Sir Harold Wilson KG, OBE  
House of Commons  
London SW1A 0AA

**File No.**

Copies to:

GR  
for PMP!  
cc IB

Originated by:  
(Initials and date)

Seen by:  
(Initials and date)

Enclosures:

(and please  
attach the  
Trade covering  
letter)  
MS

Type for signature of

PRIME MINISTER  
.....  
(Initials and date)

DEPARTMENT OF TRADE

STOCK EXCHANGE: RTP LEGISLATION

Thank you for your letter of 17 October about the Stock Exchange's request for exemption from the restrictive trade practices legislation.

The Stock Exchange's Rules involve significant restrictions on competition of a kind which have been scrutinised in the past by the Restrictive Practices Court. You may recall that when the previous administration decided to extend the restrictive practices legislation to virtually all services in 1976, they did not include the Stock Exchange's Rules in the list of exemption agreements. In the circumstances, the Director General of Fair Trading was under a legal obligation to refer the restrictions to the Court and this he did in February 1979. When we assumed office, we re-examined



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File No.

the Stock Exchange's request for exemption. We decided on balance, however, that such action would not be justified. Other City institutions of a similar self-regulatory nature who are caught by the legislation and who, I understand, are discussing their agreements effectively with the Director General, have not sought exemption. Moreover, for the Stock Exchange to be granted exemption would in no way absolve them from the requirements of EC competition rules. Indeed, we have reason to believe that the European Commission would start investigations fairly promptly if the Restrictive Practices Court ceased to have jurisdiction in this field.

A further factor in our decision is the difficulty - and the propriety - of removing a case from the Court once it has begun. However, in recognition of the problems which might arise before the Court for bodies like the Stock Exchange, we have made two major amendments to the legislation which will enable the Stock Exchange to plead their case fully and provide a period of grace for alternative proposals to be considered.

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File No.

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I realise, of course, that as a result of the case now pending, the Stock Exchange have argued that they feel inhibited from considering changes in their rules, particularly in those restrictions which are currently under scrutiny. I must point out that it was the decision of the Stock Exchange to defend their present practices before the Court and not to modify them, as others have done, in discussion with the Director General. However, we have made it clear to them that they are at liberty to discuss any changes in their rules at any time with the Office of Fair Trading on a without-prejudice basis. Leaving aside the restrictions actually before the Court, there is no evidence that the present proceedings are affecting the Stock Exchange's self-regulatory activity, and indeed a number of major changes have been introduced this year.

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File No.

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-7 NOV 1980

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VMS



Sir H. WILSON

Treasury Chambers, Parliament Street, SW1P 3AG  
01-233 3000

22 October 1980

S. Hampson, Esq.,  
Private Secretary,  
Department of Trade

Chase IT?

Dear Stuart,

Yespl MS  
LH

.....

I attach a copy of a letter the Prime Minister has received from Sir Harold Wilson about references of the Stock Exchange to the Restrictive Practices Court, which, as you will see, Nick Sanders sent to me for a draft reply.

I think this is a matter for you rather than us.

I am sending a copy of this letter to Nick Sanders.

Yours sincerely,

*Richard Tolkien*

R.I. TOLKIEN  
Private Secretary

Sir H. WILSON

(Stock Exchange)

20 October, 1980

checked  
✓ 7/11copy SENT 5/11, via D/T  
Additional copy coming  
immediate today (H 7/11)

I attach a copy of a letter the Prime Minister has today received from Sir Harold Wilson about references of the Stock Exchange to the Restrictive Practices Court.

I should be grateful if you could suggest a draft reply for the Prime Minister to send to Sir Harold, to reach us here by Wednesday, 5 November.

N J SANDERS

R I Tolkien, Esq  
HM Treasury

2/2

20 October, 1980

I am writing on behalf of the Prime Minister to thank you for your letter of 17 October about the Stock Exchange and the Restrictive Practices Court. I will place your letter before the Prime Minister at once and you will be sent a reply as soon as possible.

N J SANDERS

The Rt Hon Sir Harold Wilson KG OBE FRS MP



2

10 DOWNING STREET

PRIME MINISTER

A letter from Sir Harold  
Wilson (whose health seems to have  
improved) about references of the  
Stock Exchange to the Restrictive  
Practices Court. We will let you  
have a draft reply. \_\_\_\_\_

\_\_\_\_\_

MS

20 October, 1980

MS



From: The Rt. Hon. Sir Harold Wilson, KG, OBE, FRS, MP.

cc16

20/10



HOUSE OF COMMONS  
LONDON SW1A 0AA

17th October 1980.

18/10

Dear Prime Minister,

I trust this letter is not out of order, but in view of recent public comment, I should like to revert to an important issue raised in the Report of the Committee to Review the Functioning of Financial Institutions, Cmnd. 7937.

This relates to the references of the Stock Exchange to the Restrictive Practices Court. I had thought of raising this matter if I catch Mr. Speaker's eye in the economic debate on the Gracious Speech when Parliament resumes. Undoubtedly the appointment of the Committee concentrated the minds of people and institutions within the Stock Exchange and indeed has led to some changes, not least in the area of unquoted companies. The decision to refer them to the Court has, however, put a stop to a lot of new thinking on their part and almost everything they do as a financial institution has now got to be transacted under the eye of solicitors and barristers.

The Committee was a little inhibited by the Government's decision, but did go so far on page 106 to suggest that the machinery of the R.P.C. is not well designed for considering alternative proposals and as an alternative considered by the Council for the Securities Industry.

I do not know whether the Government have turned this suggestion down, though it has much to commend it - including the unanimous view of the 17-member Committee.

A further problem is caused by the general understanding that the Court will not get round to its investigation until 1982 or thereabouts. An alternative might well be the appointment of a small Committee on the lines of our own to look at this idea and to make clear recommendations to the Government and the relevant City institutions.

Yours very sincerely,  
Harold Wilson.

The Rt. Hon. Mrs. Margaret Thatcher, M.P.



10 DOWNING STREET

THE PRIME MINISTER

20 November 1979

*Dear Nicholas,*

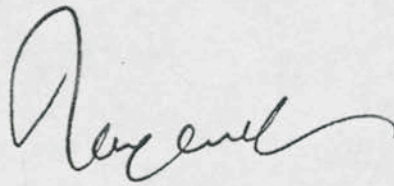
Thank you for your letter of 6 November about the decision not to remove the Stock Exchange from the scope of the Restrictive Trade Practices legislation.

I am sorry that you are so disappointed about this decision. But I can assure you that it was taken only after the most careful consideration. The legislation does of course include the power to lay an exemption order; and as John Nott made clear in the House, we would be prepared to consider granting exemption to the Stock Exchange if circumstances radically changed. Moreover, we are very much concerned that adequate regulation of the securities market should be preserved and we recognise that the Council of the Stock Exchange has a central role to play in this. It is for this reason that we intend to amend the Restrictive Trade Practices Act to permit the Court to suspend the effects of an adverse judgement so that the parties to a case can be given time to revise their agreement in the light of the Court's findings. The necessary amendments, which I understand have now been shown to you in draft, should reduce the possibility of any disruption to the securities market which might result if an adverse judgement entered into effect immediately.

/With regard

With regard to your second point about consultation, I gather that you discussed your request for exemption with Sally Oppenheim on 22 May. An extensive exchange of views between departments and the Bank of England followed, based on the memorandum which accompanied your request and on the discussions which you had with Sally. The matter was subsequently considered at length by Ministers. Finally, I gather that John Nott gave you prior notice of the proposed announcement when he saw you on 16 October. In all fairness, I do not think it can be argued that Ministers failed to consult you.

Yours ever



N.P. Goodison, Esq.



10 DOWNING STREET

PRIME MINISTER

You said you would reply to Nicholas Goodison's letter at Flag A. I attach a draft based on material provided by the Department of Trade.

Background on the consultation point is at Flag B. There clearly was consultation, but it could have been fuller.

T.L.

19 November 1979



*From the Secretary of State*

Tim Lankester Esq  
Private Secretary to the Prime Minister  
10 Downing Street  
London, SW1

19 November 1979

*Dear Tim*

.... In response to your letter of 12 November, I attach a draft reply for the Prime Minister to send to Mr Goodison about the decision to refuse the Stock Exchange exemption from the Restrictive Trade Practices legislation.

On the first point in the letter, whether the Government would be willing to reverse its decision should circumstances dictate, the letter repeats the statement given by my Secretary of State in the House on 23 October. On the second point, the Government's alleged lack of adequate consultation, the position is as follows. Consultation was requested in the initial letter from Mr Goodison to my Secretary of State on 8 May, which enclosed a memorandum setting out the Stock Exchange's case. A meeting to discuss the request for exemption was subsequently held between Mrs Oppenheim and Mr Goodison on 22 May. At that meeting, Mr Goodison asked for a "round-table discussion at which the Bank of England would be present" if the Government felt unable to grant the request for exemption. The Stock Exchange memorandum was subsequently discussed departmentally at official level and the Bank of England was involved in these consultations. As the Prime Minister knows the matter was also the subject of extensive correspondence between Ministers. My Secretary of State also discussed the Stock Exchange's views with the Governor. My Secretary of State decided that it would not be appropriate to hold the "round-table discussion" requested by Mr Goodison but nevertheless saw him personally to give him advance notice of the proposed announcement on 16 October, a week before the Commons statement. (The Secretary of State had also had dinner with the Stock Exchange on 8 October.)

In the circumstances, my Secretary of State considers that Mr Goodison's allegation of inadequate consultation is unjustified.

*Yours sincerely*  
*John Symes*

J M D SYMES  
Private Secretary



ever  
Trade to T2  
1944.

DRAFT LETTER FOR THE PRIME MINISTER TO SEND TO:

N P Goodison Esq  
Chairman  
The Stock Exchange  
London, EC2N 1HP

Thank you for your letter of 6 November about the decision not to remove the Stock Exchange from the scope of the Restrictive Trade Practices legislation.

~~As regards your first point,~~  
 As John Nott made clear to the House when he made his announcement, while we are prepared to re-consider this matter if an exceptional situation arose, we <sup>do not think</sup> ~~consider on balance~~ that a grant of exemption would ~~not~~ be warranted. We are, however, concerned that adequate regulation of the securities market should be preserved and we recognise that the Council of the Stock Exchange has a central role to play. <sup>It is for this reason that we intend</sup> ~~In recognition of this, John announced our intention~~ to amend the Restrictive Trade Practices Act to permit the Court to suspend the effects of an adverse judgement so that bodies involved in proceedings <sup>can</sup> ~~would~~ be given time in which to revise their agreement in the light of the Court's findings. The necessary amendments (which I understand have now been shown to you in draft) should reduce the possibility of any disruption to the securities market which might result if an adverse judgement entered into effect immediately.

is in this.

With regard to your second point about consultation, I gather that you discussed your request for exemption with Sally Oppenheim on 22 May. An extensive exchange of views between departments followed (in which the Bank of England participated) based on the memorandum which accompanied your request and on the discussions which you had with Sally. The matter was subsequently considered at length by

20 para

10 DOWNING STREET

// I am sorry that you  
are so disappointed about  
this decision. That I can  
assure you that as it was  
taken only after the most  
careful consideration. The  
legislation does not cover  
in that the power to lay  
an exemption order; and  
as John Holt made clear  
in the House, we certainly  
would be prepared to consider

gaining exception to the  
Stock Exchange if circumstances  
radically changed. But moreover,

etc. ~~as~~

we are very much concerned..

.....

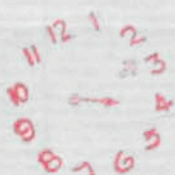




Ministers. Finally, I gather that John Nott gave you prior notice of the proposed announcement when he saw you on 16 October.

I appreciate that ~~the~~ <sup>your</sup> decision in this ~~matter~~ <sup>not to exempt the Stock Exchange</sup> is not ~~as~~ <sup>what</sup> you would have wished. However, in all fairness I do not think it can be argued that Ministers failed to give your request the fullest consideration or that you received inadequate consultation.

119 NOV 1979



CONFIDENTIAL



twon PA.

SBF 19/11/79



10 DOWNING STREET

*From the Private Secretary*

12 November 1979

The Prime Minister has received the enclosed letter from Mr. Nicholas Goodison about the decision not to exempt the Stock Exchange from the Restrictive Trade Practices Act. I would be grateful for a draft reply which the Prime Minister can send to Mr. Goodison - by Monday 19 November.

I understand that Mr. Goodison's complaint that he was not consulted is false.

T. P. LANKESTER

Stuart Hampson Esq  
Department of Trade.

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1  
PRIME MINISTER

This is a letter from Nicholas Goodison expressing his concern at the decision not to exempt the Stock Exchange from the Restrictive Trade Practices Act. You will recall that Mr. Nott decided not to exempt them; but the Act will be amended so that if the Court finds that the practices of the Stock Exchange are contrary to the public interest, there will be an interval in which alternative procedures can be introduced without an immediate threat to the operation of the market.

His complaint that he was not consulted does not stand up. Mrs. Oppenheim saw him on 22 May; there was then correspondence; and Mr. Nott saw him a week before the decision was announced.

I imagine you will want to reply.  
Or shall I ask Mr. Nott?

*Men - I shall have to meet.*

8 November 1979

*TL*

# THE STOCK EXCHANGE

N. P. GOODISON  
CHAIRMAN



LONDON, EC2N 1HP  
TELEPHONE: 01-588 2355  
TELEX: 886557  
TELEGRAMS: STOCKEX LONDON EC2

6th November, 1979

Dear Margaret

## Restrictive Practices Court

Forgive me for bothering you about this but as you know John Nott has decided to leave us within the confines of the Restrictive Practices Court rather than moving us to a different form of review.

I am not writing to you to seek to reverse this decision. I did however promise months ago to keep you in touch and I want to make two points, both of which seem to me to be exceedingly important -

1. In answer to a question in the House John said that he was always open to representations at some future date if it looked as if adequate regulation of the securities markets was being put at risk by the case. This has always been my central point in arguing that the Restrictive Practices Court is the wrong forum for a study of The Stock Exchange. I and my Council have a job to do as the central non-statutory regulatory authority in the securities markets. Government must be concerned with adequate regulation both because it must want to ensure adequate protection of investors and because it uses the stock market as its chief means of raising long term money, recently in very large quantities. The Restrictive Practices Court's terms of reference are narrow and the process is an adversary legalistic process. The Stock Exchange, on the other hand, is an evolving market whose regulatory rules have to be changed constantly to meet the needs of users and ensure their reasonable protection.

I do very much hope that Government shares my deep concern about adequate regulation and really will take an interest in the unfolding of this extremely complex case. I wanted a different forum because Government would have been able to exercise some influence on the outcome. As I understand the legislation, Government cannot now do this, even allowing for the amendments which John mentioned to me but which have

(continued)..

not yet been tabled. It seems to me that the only action which Government could take during the course of the case is to lay an exemption order and I am writing to you to express the hope that Government will have the political will to do so if it is necessary.

2. I was really astonished by the Government's failure to respond to our repeated requests for discussions before the taking of an adverse decision. As you know, I am a keen supporter of your Government. I am very sorry that I had to criticise it publicly for taking this decision without any consultation whatever with us. I had no choice, which was a very invidious position to find myself in.

Yours ever  
Nicholas

The Rt. Hon. Mrs. Margaret Thatcher, M.P.,  
10 Downing Street,  
London SW1.

- I look forward very much to joining  
you on 19 November.

c. c. John Nott.



*at W. Lushan*

*Econ*  
*PC*  
*NBM*  
*R*  
*21*

RESTRICTIVE TRADE PRACTICES ACT 1976: THE STOCK EXCHANGE

On 23 October 1979 the Secretary of State for Trade announced that he could not meet the request of the Stock Exchange that their Agreement should be removed from the scope of the Restrictive Trade Practices Act 1976. This note explains the reasons for the Government's decision.

THE RESTRICTIVE TRADE PRACTICES ACT 1976

The 1976 Act provides for registration with the Director General of Fair Trading of agreements under which two or more parties, being in business in the UK to produce or supply goods, accept restrictions in respect of matters such as pricing, terms or conditions of supply, and the persons to or from whom goods are supplied. The Restrictive Trade Practices (Services) Order 1976 extends broadly similar provisions in respect of services.

Registrability depends on whether an agreement contains restrictions of a specified form or kind and not on whether the agreement has the effect of reducing competition.

Certain types of agreement are exempt from registration, including agreements authorised by the European Coal and Steel Community Treaty, agreements relating to know-how, trademarks and patents, and agreements authorised by statute. Moreover, Schedule 4 to the Fair Trading Act 1973 (which is replaced by Schedule 1 to the 1976 Act) excluded from the provisions of the legislation agreements relating to certain professional services, including legal, medical and dental services, architects, accountants and engineers.

The Stock Exchange did not press for similar exemption when the 1973 Act was being prepared. In connection with the 1976 Act they made representations for exemption but did not press their request.

THE REFERENCE TO THE RESTRICTIVE PRACTICES COURT

The Stock Exchange agreement was placed on the public register in October 1977. The major restrictions identified by the Director General of Fair Trading as needing to be judged by the Court were the Stock Exchange's minimum rates of commission for broking services and the so-called "single capacity system" which prevents jobbers acting as brokers and vice versa.



The Director General is under a duty to refer every registered agreement to the Restrictive Practices Court for a decision as to whether the restrictions are contrary to the public interest except where they are not of sufficient significance to warrant Court proceedings or where the agreement has been terminated.

The Stock Exchange agreement was so referred on 9 February 1979. The Court proceedings have therefore already commenced.

Given the importance attached to the independence from Government of the OFT and the Court, interference in this judicial process could only be contemplated by Ministers in most exceptional circumstances.

#### THE REQUEST FOR EXEMPTION

The Stock Exchange approached the last Administration only in 1978 to seek exemption from the legislation. Their application was refused. Following the election the Stock Exchange renewed their request for exemption.

Apart from a considerable amount of correspondence and Memoranda from the Stock Exchange since the election, the Chairman met the Minister of State for Consumer Affairs (Sally Oppenheim) on 22 May. Some of the views of the Stock Exchange have also been reflected in the Government's deliberations by the Governor of the Bank of England and the Treasury.

The Stock Exchange's request rests primarily on two grounds:

(a) the Restrictive Practices Court is allegedly not an appropriate forum for examining the Stock Exchange's workings because it is unable to take a wide enough view of the benefits to the public that arise indirectly through its contribution to the efficient working of the economy;

The Stock Exchange is able to prepare its pleadings to the Court as widely as it thinks necessary. There is no reason to believe that the Court is incapable of reaching a proper decision on the public interest.





(b) upon a declaration of the Court that certain restrictions are against the public interest, those restrictions immediately become void. Because the Court does not recommend alternatives this could lead to an awkward period when the Stock Exchange lacked certain rules during which new rules were being made. The new rules may also be caught by the legislation. As a result, instability would be introduced to the financial market and there would be unforeseen consequences for the economy.

On 23 October the Secretary of State for Trade announced that he would introduce amendments to the Restrictive Trade Practices Act which should allow bodies involved in proceedings under the Act (at the discretion of the Court) time in which to revise their rules to take account of any finding that certain restrictions are contrary to the public interest. This amendment will obviously benefit the Stock Exchange.

In the light of the above, the Government concluded that exemption was not appropriate. The Secretary of State for Trade has indicated that this would not preclude later use of the powers if changed circumstances warranted a reconsideration of the decision.

The statements by the Secretary of State for Trade referred to above were made during the Second Reading Debate of the Competition Bill in which the Government's commitment to competition as an essential contribution to its economic policy and its disengagement of controls on industry.

Paymaster General's Office  
Privy Council Office  
68 Whitehall  
London SW1A 2AT

Tel: 01-233-8632/8744/4827

1 November 1979

1 - NOV 1979

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10 2  
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*Mr Sanders*

PA

MJS



*cc Mr Lushan*

*MBM*

*From the Secretary of State*

Richard Prescott Esq  
Paymaster General's Office  
Whitehall  
London, SW1

30 October 1979

*Russell*

*Dear Richard*

THE STOCK EXCHANGE

I understand that a number of Ministers have been approached by City contacts about my Secretary of State's decision not to exempt the Stock Exchange from the scope of the Restrictive Practices Act 1976. I attach a note on this point which can be drawn on freely in answer to any enquiries.

I am sending copies of this letter and enclosure to Tim Lankester (Number 10), the Private Secretaries to other members of the Cabinet and to Martin Vile (Cabinet Office).

*Yours sincerely,*

*Stuart Hampson*

S HAMPSON  
Private Secretary



## RESTRICTIVE TRADE PRACTICES ACT 1976: THE STOCK EXCHANGE

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The Stock Exchange's request rests primarily on two grounds:

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31 OCT 1979

(b) upon a declaration of the Court that certain restrictions are against the public interest, those restrictions immediately become void. Because the Court does not recommend alternatives this could lead to an awkward period when the Stock Exchange lacked certain rules during which new rules were being made. The new rules may also be caught by the legislation. As a result, instability would be introduced to the financial market and there would be unforeseen consequences for the economy.

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In the light of the above, the Government concluded that exemption was not appropriate. The Secretary of State for Trade has indicated that this would not preclude later use of the powers if changed circumstances warranted a reconsideration of the decision.

The statements by the Secretary of State for Trade referred to above were made during the Second Reading Debate of the Competition Bill in which the Government's commitment to competition as an essential contribution to its economic policy and its disengagement of controls on industry.

Lean PM

jfh

CC	HO	Ch. Sec.
	FCO	LCO
	HMT	PGO
	IND	CO
	ENG	
	LPO	
	MAFF	
	EMP	

SC WAP



10 DOWNING STREET

From the Private Secretary

22 October 1979

Stock Exchange

The Prime Minister has read your letter of 18 October with which you enclosed the draft of the announcement which your Secretary of State intends to make about the Stock Exchange and the Restrictive Trade Practices Act during his speech in the House tomorrow. The Prime Minister is content with the draft, and she thinks that the solution which Mr. Nott has decided on is a good practical compromise.

I am sending a copy of this letter to the Private Secretaries to the members of E Committee, to Ian Maxwell (Lord Chancellor's Office), Richard Prescott (Paymaster General's Office) and Martin Vile (Cabinet Office).

T. P. LANKESTER

Stuart Hampson, Esq.,  
Department of Trade.

VLS



From the Secretary of State

*cc Mr Whitford  
Mr James  
Lingham*

*Prime Minister*

*You agreed earlier that  
it would be wrong to  
exempt the stock exchange.  
The draft seems O.K.  
Content?*

Tim Lankester Esq  
Private Secretary  
10 Downing Street  
Whitehall  
SW1

*Yes - it's*

*18* October 1979

*12  
1979*

*is a good  
announcement on  
technical grounds  
and*

*Dear Tim*

STOCK EXCHANGE

My Secretary of State and the Chancellor of the Exchequer have been in correspondence during the summer about the request from the Stock Exchange for exemption from the Restrictive Trade Practices Act (Mr Nott's letter of 16 August and the Financial Secretary's reply of 22 August).

An amendment to the Act has now been prepared which will enable the Court to defer the effects of its Declaration that restrictions are contrary to the public interest; this will give the parties time in which to make revisions in the light of the Court's findings. Thus if the Court finds that the practices of the Stock Exchange are contrary to the public interest, there will be an interval in which alternative procedures can be introduced without an immediate threat to the operation of the market.

My Secretary of State has kept in touch with the Chairman of the Stock Exchange on this subject and gave him full details of what was proposed at a meeting on Tuesday. Mr Goodison said that he was not surprised that the request for exemption was being rejected, although he would certainly have to express in public the disappointment of the Stock Exchange at this decision.


... I enclose a copy of the announcement which my Secretary of State will introduce into his speech on the Second Reading of the Competition Bill on Tuesday 23 October.

I am sending copies of this letter to the Private Secretaries of Members of E Committee, to Ian Maxwell (Lord Chancellor's office), Richard Prescott (Paymaster General's office) and to Martin Vile (Cabinet Office).

*Yours sincerely,  
Stuart Hampson*

S HAMPSON  
Private Secretary



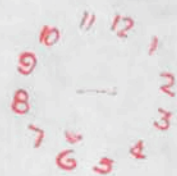


COMPETITION BILL: SECOND READING SPEECH -  
STOCK EXCHANGE ANNOUNCEMENT

There is one immediate change which I consider needs to be made to the Restrictive Trade Practices Act. I can see that in cases involving self-regulatory bodies the existing procedure of the Restrictive Practices Court could lead to difficulties should the Court reach an adverse finding with immediate effect. I propose, therefore, to amend the powers of the Court to enable it to defer the effects of its Declaration that restrictions are contrary to the public interest; this will give the parties time in which to make revisions in the light of the Court's findings. The revised Agreement would then have to be submitted to the Court for clearance.

As Members will be aware, the Stock Exchange Agreement has been referred to the Restrictive Practices Court under the Restrictive Trade Practices Act. The Stock Exchange have requested that their Agreement should be removed from the scope of the legislation on the ground that the Restrictive Practices Court is not an appropriate body to investigate their activities. I have decided that it would not be appropriate to meet this request. However, I am concerned that adequate regulation of securities markets should be preserved and I recognise the value of self-regulation in which the Council of the Stock Exchange have a central role to play. I believe that the amendment to the Act I have referred to earlier will be of benefit to the Stock Exchange.

19 OCT 1979



FROM THE PRIVATE SECRETARY

Econ Pd



HOUSE OF LORDS,  
SW1A 0PW

24 August 1979

Dear Tom,

RMBM

Stock Exchange

The Lord Chancellor has seen a copy of your Secretary of State's letter to the Chancellor of the Exchequer dated 16 August 1979 about the reference of the Stock Exchange to the Restrictive Practices Court.

The Lord Chancellor agrees with your Secretary of State's proposals contained in the letter. He has said that Mr Justice Mocatta should at the appropriate time be advised of what is happening, and this will be done by our officials here. Your Secretary of State may be interested in a further comment of the Lord Chancellor, since it bears on matters discussed between him and the Secretary of State earlier in the year. The Lord Chancellor has written:

"The whole mess only confirms me in my view that the Restrictive Practices Court should be abolished and replaced by legislation which makes all restrictive practices subject to the ordinary process of litigation, on the basis that agreements which give effect to them are prima facie contrary to public policy and may be the subject of actions for injunction, damages or relator actions."

No doubt this can be borne in mind in the discussions envisaged on the future of restrictive practices.

I am copying this letter to the Private Secretaries to the Prime Minister, Members of E Committee and Sir John Hunt.

*Yours sincerely*  
*I H Maxwell*

I H MAXWELL

T G Harris Esq  
Private Secretary to the  
Secretary of State for Trade  
1 Victoria Street  
LONDON SW1H 0ET

21 AUG 1979





10 DOWNING STREET

OK. 12 2018  
TLJ (O.A. ~~28~~ 28/VIII)

pm has not seen  
this correspondence  
about the Stock Exchange

MA  
24/11/18



2 pps

Treasury Chambers, Parliament Street, SW1P 3AG

22 August 1979

The Rt Hon John Nott MP  
 Secretary of State for Trade  
 Department of Trade  
 1 Victoria Street  
 LONDON  
 SW1

MBM

R  
 28/8

Dear Secretary of State,

STOCK EXCHANGE

In Geoffrey Howe's absence, I am replying to your letter of 16 August.

I am glad that it is possible to find a way forward on the lines which we had suggested. I note that you are prepared to consider total exemption of the Stock Exchange later if it proves that the Restrictive Trade Practices Court takes an unduly narrow view of the considerations which it can take into account. On that understanding, I agree that officials should now work out the details of the legislative provisions needed to allow the RTP Court to consider alternative arrangements and to defer the effect of any findings while doing so.

I am content that you should communicate our decision to the Stock Exchange: I assume that you will give them an opportunity to consider and discuss it before any announcement. I should be grateful if my officials could be consulted about the terms of the announcement.

I am sending copies of this letter to the Prime Minister, the members of 'E' Committee, to the Lord Chancellor and to Sir John Hunt.

Yours sincerely,

P Diggle (private secretary)

pp NIGEL LAWSON

(approved by the Financial Secretary and signed in his absence)

1979

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*Srk Raymond*



MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON S.W.1

*From the Minister*

CONFIDENTIAL

The Rt Hon John Nott MP  
Secretary of State for Trade  
1 Victoria Street  
London SW1H 0ET

21 August 1979

*Res John*

I have seen the correspondence you have had with Geoffrey Howe about the reference of the Stock Exchange to the Restrictive Trade Practices Court, and am content with the solution proposed in your letter of 16 August.

As I am sure you appreciate, the decision will call for fairly careful presentation to avoid the accusation from the Opposition that we are changing the rules only because they have succeeded in catching the Stock Exchange. The question of exemption, were it to become a live issue, would need careful consideration, not least as to timing.

I am copying this letter to the Prime Minister, the Lord Chancellor, members of 'E' Committee and Sir John Hunt.

*[Handwritten signature]*

PETER WALKER



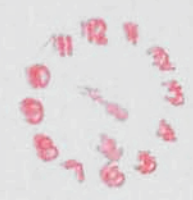
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22 AUG 1970



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Kear. Pol.

CONFIDENTIAL



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*From the Secretary of State*

The Rt Hon Sir Geoffrey Howe QC MP  
Chancellor of the Exchequer  
Treasury Chambers  
Parliament Street  
SW1

16 August 1979

Dear Geoffrey.

## STOCK EXCHANGE

Thank you for your letter of 31 July agreeing that the reference of the Stock Exchange to the Restrictive Practices Court should go ahead provided that we used the Competition Bill to make the Court proceedings rather more flexible by giving the Court express powers to delay giving effect to its decision so that, in the event of an adverse finding, the Stock Exchange would not necessarily have to abandon parts of its agreement overnight and could be given the opportunity to formulate alternative arrangements and to have them considered by the Court. You also suggested that if the Court were to take an extremely narrow view of the considerations which it can take into account, the question of exemption should be re-examined. I accept both points.

The first is the more complicated and it will take a little time to work out the precise details (though this need not delay the announcement of our decision). My officials have held preliminary discussions with those in the Lord Chancellor's Department and in the Office of Fair Trading. They suggest that something on the following lines would be feasible:



*From the Secretary of State*

- a) on the application of the respondents, the Court would, if it judged it appropriate, be able to defer rendering void for a specified period any restrictions which it found to be against the public interest (at present under section 2(1) of the Restrictive Trade Practices Act the two occur simultaneously);
- b) the parties to the agreement would then be enabled to discuss any amendments to their agreement with the Director General taking account of any comments the Court had made, and to revise their agreement accordingly;
- c) the revised agreement would then be re-submitted to the Court within the required period;
- d) assuming that the new restrictions were not open to the same objections as those found to be against the public interest, the Court would then either:
  - i) find that the revised restrictions were not against the public interest; or
  - ii) make an order against the original restrictions, but permit the revised agreement to operate provisionally until any new restriction, in turn, could be fully examined in the usual way following registration.

CONFIDENTIAL

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*From the Secretary of State*

A number of details still have to be worked out (including the time within which the respondents may make an application for approval of their revised agreement). Although it may not often be used, I see a provision of this sort as having some wider benefit in giving the restrictive trade practices legislation more flexibility to deal with self-regulatory bodies such as the Stock Exchange, and in announcing our decision I would propose to refer specifically to this wider aspect.

I would propose that we should tell the Stock Exchange of our decision (and announce it) as soon as possible, making it clear that we intend introducing this added flexibility to the Court's procedure.

I would be grateful if you and colleagues to whom I am copying this letter would let me know if you agree.

I am copying this letter to the Prime Minister, to the Members of E Committee, to the Lord Chancellor (together with a copy of yours of 31 July) and to Sir John Hunt.

*Yours ever  
John*

JOHN NOTT

16 AUG 1979





Eca PA  
NBP  
MS

Treasury Chambers, Parliament Street, SW1P 3AG

01-233 3000

31. July, 1979

*John Nott*

STOCK EXCHANGE

I was interested to see the two papers which our officials have prepared about the reference of the Stock Exchange to the Restrictive Trade Practices Court.

Like you, I would have preferred a reference to the Monopolies and Mergers Commission, but I can see the force of the arguments against reversing the reference to the Restrictive Trade Practices Court now.

I remain concerned at the dangers which the reference presents in three particular ways. First, there is the danger of turbulence in the market if the Court were to strike down certain Stock Exchange arrangements: a Court ruling would, as I understand it, take immediate effect. Second there is the danger of long-term structural damage to the market, especially if the Court cannot take sufficiently wide considerations into account. Third, there is the danger that the Stock Exchange will be inhibited from desirable innovations during the long period (which I understand could be as much as three years) whilst the Court is carrying out its enquiry. I do not think I can simply accept the danger to our funding programme which a hiatus in gilt sales would represent nor the chance that long term change might come about without due attention to the implications: an effective market in gilts and in equities is essential to the economy.

That said, it seems to me that there is a way in which we could provide the necessary safeguards for allowing the reference to the RTP Court to proceed for the moment. These safeguards involve an amendment to the terms of reference of the Court and we have a

/legislative

The Rt. Hon. John Nott, M.P.



legislative vehicle to hand in the Competition Bill. I understand that it would be possible to add a clause to the Bill which would give the Court powers:-

- (a) in the event of an adverse ruling, to offer a limited "stay of execution" while alternative practices are instituted by the Stock Exchange;
- (b) to consider any alternative arrangements which the Stock Exchange might propose either during the hearings or during the stay of execution.

I should also wish to hold open, explicitly, the option of exempting the Stock Exchange altogether from the RTP legislation if it turns out that the Courts takes an extremely narrow view of the considerations which it can take into account. Another way round this problem would be to amend the "gateways" in the RTP Act but I believe that would be complicated and if the gateways did not then prove adequate it would be difficult to exempt the Stock Exchange altogether. In the case of exemption we would need to consider alternative forms of enquiry but this will, I hope, not happen.

The course I am proposing has the advantages of allowing the reference to the Court to proceed without incurring the difficulties of immediate exemption. We are all agreed that some enquiry is needed. To go ahead in this way maintains the Government's freedom to safeguard the operations of the market and it sets up positive incentives for the Stock Exchange to devise and propose their own improvements. I hope that you will feel able to accept the idea and, if you do, no doubt our officials will be discussing the drafting of the necessary clause.

I am sending copies of this letter to the Prime Minister, the Secretary of State for Industry and to Sir John Hunt.

*This is a pretty cumbersome solution, not least because of the need to ensure that the changes can take effect in relation to this case. If you find it unworkable or unattractive, then I think I certainly will not make the case for making the reference altogether*

(GEOFFREY HOWE)

A handwritten signature, likely of Geoffrey Howe, consisting of a stylized 'G' and 'H'.

A handwritten signature, likely of Geoffrey Howe, consisting of a stylized 'G' and 'H'.

1 AUG 1979





CONFIDENTIAL



Secretary of State for Industry

DEPARTMENT OF INDUSTRY  
ASHDOWN HOUSE  
123 VICTORIA STREET  
LONDON SW1E 6RB

TELEPHONE DIRECT LINE 01-212 3301  
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6 June 1979

The Rt Hon John Nott MP  
Secretary of State for Trade  
Department of Trade  
1 Victoria Street  
London SW1

*John Nott*

*TK*

RESTRICTIVE TRADE PRACTICES ACT : STOCK EXCHANGE

Thank you for sending me a copy of your letter of 30 May to Geoffrey Howe about the Stock Exchange request that they should be exempted from the Restrictive Trade Practices Act. I have also seen the reply from Geoffrey's Private Secretary to yours.

Competition policy generally and the effects of the reference of the Stock Exchange to the Restrictive Trade Practices Court in particular have important implications for British industry, and I hope that I may be able to join any discussion which you have with Geoffrey Howe after the Budget. I should also like my officials to be associated with any review which Trade and Treasury officials may undertake with the Bank.

Although I very much doubt, if we were starting from scratch, that anybody would have seen the Court as the best institution to review the complex competition issues to which the Stock Exchange gives rise, I must say that I can see substantial problems in amending the Restrictive Trade Practices (Services) Order at the present time. I wish too that I felt greater confidence that the Monopolies and Mergers Commission would be able to produce the effective review that I believe we are all agreed is needed.

I am sending a copy of this letter to the Prime Minister, the Chancellor and to Sir John Hunt.

*Yours faithfully  
Ken*



*From the Secretary of State*

Martin Hall Esq  
PS/Chancellor of the Exchequer  
Treasury Chambers  
Parliament Street  
London, SW1P 3AG

5 June 1979

*Dear Martin*

RESTRICTIVE TRADE PRACTICES ACT: STOCK EXCHANGE

My Secretary of State has seen your letter of 31<sup>st</sup> May. He is content for officials to discuss the options as the Chancellor suggests.

I am taking this opportunity to circulate the note inadvertently omitted from my Secretary of State's letter. Copies go to Tim Lankester (No 10), Andrew Duguid (Department of Industry), John Beverly (Bank), and Martin Vile (Cabinet Office).

*Yours sincerely*  
*John Symes*

J M D Symes  
Private Secretary

*Economic*

*Policy*

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STOCK EXCHANGE: REQUEST FOR EXEMPTION FROM THE RESTRICTIVE  
TRADE PRACTICES LEGISLATION

INTRODUCTION

The Stock Exchange applied to the last Government for exemption from the scope of the restrictive trade practices legislation, but were refused. The Director General of Fair Trading subsequently referred the Stock Exchange agreement to the Restrictive Practices Court on 9 February 1979 - and from that point has been in litigation with the Stock Exchange. The Stock Exchange has now applied again by means of Mr Goodison's letter of 8 May to be exempted and has asked to be able to put the Stock Exchange's case to Ministers in discussion and to discuss what alternative study would satisfy the Government.

BACKGROUND

2 The Restrictive Trade Practices (Services) Order 1976 brought within the scope of the legislation all commercial services except those already exempted in the Fair Trading Act 1973 and those which were already effectively controlled by Government or about which problems of jurisdiction arose.

3 When the scope of the Order was being discussed, the Stock Exchange and the Department of Trade argued for the exclusion of the Stock Exchange on the grounds that it was covered by the review then being carried out by the Department of Trade of supervision of the securities market, which might result in a measure of Government control. The Stock Exchange, however, did not press its case at that stage and Departments agreed not to exclude it because:



(a) it was not already subject to Government control, nor did it raise problems of jurisdiction;

(b) some of its practices were not different in kind to those practised by other bodies, such as the Clearing Banks, which had been accepted as registrable; and

(c) the proceedings in the Restrictive Practices Court would not duplicate the Department of Trade's review. If that review resulted in statutory backing for particular restrictions, these would automatically be exempted from the restrictive practices legislation.

In the event the Department of Trade's review did not result in new statutory controls.

#### REFERENCE PROCEDURE

4 The DGFT has a statutory duty to refer the whole agreement to the Court and to put before the Court all the material considerations he thinks are necessary for it to reach its decision. He has told the Stock Exchange which restrictions must be either abandoned or defended before the Court. The task of the Stock Exchange will be to convince the Court that these restrictions meet certain public interest tests. The particular restrictions identified are:

(a) brokers are not allowed to provide broking services except in accordance with specified minimum rates of commission;



(b) jobbers may not act as brokers; and

(c) brokers are not allowed to carry out deals with non-members or, directly, with other brokers - they must put all their deals through jobbers in the central market.

The so-called single capacity system, which prevents jobbers acting as brokers or brokers as jobbers, is thus brought into question.

#### THE REQUEST FOR EXEMPTION

5 The Stock Exchange's current request for exemption rests primarily on the grounds that:

(a) the Restrictive Practices Court is not an appropriate forum for examining the Stock Exchange's workings because it is not able to take a wide enough view of the benefits to the public that arise indirectly through its contribution to the efficient working of the economy;

(b) because the Restrictive Practices Court merely judges whether or not particular restrictions are against the public interest (and does not recommend alternatives) there could be an awkward delay should it strike down any part of the Stock Exchange agreement, before new rules were drawn up. The new rules may also be caught by the legislation. As a result, instability would be introduced to the financial market and there would be unforeseen consequences for the economy.



6 The first argument is therefore concerned with the definition of the public interest in the Act, and in particular whether the criterion in s.19(1)(b), which refers to benefits 'to the public as users of any services', would preclude the Court from considering wider indirect benefits to the public from having an effective and well regulated market. The Government themselves have an interest in such wider benefits being taken into account, if the Court is satisfied that the satisfactory running of the market does in fact depend on the restrictions being considered. In particular:

(i) the Treasury attach great importance to having an active secondary market to enable the Government to fund its borrowing requirement and to implement its monetary policy;

(ii) the Department of Industry similarly attach importance to an active secondary market in enabling companies to raise new capital on the primary market;

(iii) Companies Division is responsible for the proper regulation of the securities market, and relies on a combination of statutory and self-regulatory control in which the authority of the Stock Exchange over its members, its rules and its disciplinary powers play an important part.

There could clearly be damaging consequences for these policies if the Court decided that the wording of the Act debarred it from taking account of the wider benefits of this kind and then struck down the restrictions, and if it turned out, as the Stock Exchange contends, that the continuance of at least some of these restrictions was



necessary to the continuance of the wider benefits.

7 OFT have sought the views of their Counsel as to whether the Court would be able to interpret the public interest widely. He advised in consultation, on the papers before him, that a strict interpretation of s.19 must rule out some issues although others - notably the benefits of a regulated market and the assurance of a fair price to buyers and sellers of securities - would probably be covered. However, without considerable study of economic and legal factors he could not predict what attitude the Court would take after it had seen the pleadings and had heard economic evidence. OFT's view is that the Stock Exchange could prepare its pleadings as widely as it thinks necessary and could bring them before the Court.

8 At the time of the last application it was suggested to representatives of the Stock Exchange that they could take advantage of the possibility of seeking a ruling from the Court at an early stage in the proceedings. However, Stock Exchange's Leading Counsel took the view that it would not be in his client's interest to seek such a ruling before the main hearing. Since the Director General cannot himself seek a preliminary ruling on this without the co-operation of the Stock Exchange they have effectively foreclosed this route, and the Court will be able to consider the matter only at the stage of the main hearing.

9 The Stock Exchange's second argument is that the Court has no discretion to consider or recommend alternatives to the present restrictions, and that the abrupt striking down of the restrictions,



which they say are fundamental to the operation of the market, would cause a damaging period of uncertainty. The first part of this is true, and was recognised in 1976: it is not therefore a new factor. OFT question whether the ending of restrictions - which represent collective agreement to work in a certain way - would have an immediate effect. Established practices which such agreement underlines would be likely to continue for some time. It was the experience after Court rulings in good cases that changes came slowly. In any case the consequences of striking down particular restrictions would be a legitimate consideration to put before the Court, and the Court could be expected to take them into account in reaching its decision. If the Court was nevertheless minded to rule that any of the restrictions were contrary to the public interest, there would still be possibilities of gaining time in which to consider acceptable alternatives. The Court could be expected in that event to view sympathetically any reasonable proposal for avoiding undue disruption as a result of their ruling and the Director General would be prepared to agree to the delaying of the formal court ruling or of the making of orders restraining the parties from giving effect to the restrictions struck down by it or any other reasonable steps for this purpose. It would be open to the Stock Exchange to appeal to the Court of Appeal against the judgement of the Restrictive Practices Court on grounds of law. In that case it could apply for a stay of execution or of proceedings pending the hearing of the appeal, and the Court of Appeal could be expected to direct accordingly. There is therefore likely to be flexibility even at the point of decision as well as plenty of opportunity to consider alternatives if necessary during the long period before the hearing (late 1980 or more probably 1981). Variations can be made to the rules throughout this period and





OFT would be willing to discuss them without prejudice. There is no legal bar to such discussions.

#### CASE FOR EXEMPTION

10 The Stock Exchange is concerned about the trouble and expense to which it would be put during protracted Court proceedings (possibly extending into 1982), and that the uncertainty which would be engendered meanwhile might inhibit useful reforms which might otherwise take place. In the view of officials, the case for exemption turns largely on the situation which would arise if, at a late stage in the proceedings, the Court ruled that it could not take account of the wider arguments of concern to the Government in considering the public interest. A number of Government Departments are particularly concerned that such wider benefits should be taken into account. The Treasury (with its interest in funding the Government's borrowing requirement) and Department of Industry (with its interest in companies' ability to raise capital) attach great importance to having an active secondary market; and with its responsibility for the regulation of the securities market, the Department of Trade, recognises that The Stock Exchange's rules and disciplinary powers play a major role in the system of control. The risk that the Court would not be able to take these considerations into account is unquantifiable; if it becomes apparent in the course of the hearing that it could not do so, it would be awkward to withdraw a case which appeared to be going unfavourably to The Stock Exchange; and it would then be difficult to subject The Stock Exchange, after all the trouble and expense of the abortive hearing, to a second form of enquiry.



11 The Restrictive Practices Court, when it rules against a particular restriction, is not in a position to give advice on an acceptable alternative. Although it would be possible (perhaps with the aid of new legislation following the review of Competition policy) to delay the striking down of any restriction until alternative arrangements can be brought into force, there is a possibility that during the transitional period the market might be partially unregulated, a prospect <sup>about</sup> which the Department as supervisory authority would be very concerned.

12 Ministers may also consider that there could be some political embarrassment if proceedings are allowed to take their course. It would be open to the Stock Exchange, in arguing before the Court that its restrictions were necessary in the wider public interest, to call as witnesses officials of the Treasury, the Department of Trade, the Bank of England or the Government Broker. Although these officials would be appearing merely as expert witnesses, they might be misrepresented as taking the side of the Stock Exchange. This problem might, however, be avoided if the OFT were to call the official witnesses.

#### CASE AGAINST EXEMPTION

13 The main grounds for reluctance to grant exemption are that:

- (a) amendment to the Services Order would require an Affirmative Resolution in both Houses and there could be political embarrassment for the Government (which could be accused either of abandoning the policy enshrined in the Fair Trading Act 1973



or of being selective in the support for stronger competition powers generally).

(b) the Stock Exchange's arguments do not show that there has been a change in circumstances since the Order itself was considered in 1975; nor do they establish convincingly that proceedings before the Court are inappropriate, even if they are not ideal;

(c) that no adequate argument has been put forward that, contrary to OFT's view, all the wider benefits the Stock Exchange want to plead are dependent on the continuance of the restrictions on the level of commissions and against dual capacity;

(d) although the Stock Exchange is unique in some respects (jobbing falls outside the scope of the legislation) it could be difficult to draw a line between the Stock Exchange and other bodies which would be eager to seek similar exemption from the Order, with the result that the current application of the legislation to services would be seriously undermined;

(e) exemption at this stage might be seen as interfering with judicial proceedings already before the Court;

(f) there are difficulties over alternative forms of enquiry.

#### ALTERNATIVE ENQUIRY

14. We understand that the Stock Exchange accept that if they are exempted from the Restrictive Practices Court it could only be on condition that they went through an equally searching investigation in some more appropriate forum.



15. The nature of such an investigation would require some thought
- (a) the obvious alternative to the Restrictive Practices Court would be an enquiry by the Monopolies and Mergers Commission, and this would fit well with the Government's intention to develop the Commission as the mainstay of its prices and competition policy. There may, however, be technical legal problems about making a formal legal reference to the Monopolies Commission under statutory powers;
  - (b) the Monopolies and Mergers Commission and their staff might perhaps be asked to carry out the enquiry, although not under statutory powers. There are no precedents for using the Commission in this way;
  - (c) a departmental enquiry could be held by officials of this Department (possibly with others). This would be difficult for the Department to undertake and even if the report was published it would risk being regarded as a whitewash job in comparison with a strong objective external enquiry;
  - (d) an ad hoc body could be set up - a Committee or possibly a Royal Commission. However this might look odd, given that two bodies are already operative in the same field, (the Monopolies Commission and Sir Harold Wilson's Committee on the Functioning of the Financial Institutions);



(e) Sir Harold Wilson's CFFI could be asked to consider the Stock Exchange restrictions and deal with them in its report. The Committee is expected to report by the end of the year. Its terms of reference are broad, and it is already interesting itself in the organisation and regulation of the institutions. Sir Harold Wilson's recent letter to the Secretary of State is somewhat ambiguous but implies that he might not be averse to an invitation to deal with the issues otherwise before the Court.

16. An advantage of any of these courses is that it would be possible to frame the terms of reference to put beyond doubt that the enquiry was to look at the Stock Exchange restrictions in the broad, taking account of the wider public interest as well as the effect of the restrictions on competition. However, there are two limitations to most of the alternatives, one more serious than the other. One is that an ad hoc Committee would have no powers to call for witnesses or papers. This should not be a problem: if the Stock Exchange want an alternative enquiry, they should be prepared to undertake to co-operate fully with it. A more serious weakness is that the Government would have no power to enforce any recommendations. Unless the Stock Exchange adopted them voluntarily, legislation would be required.

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10 DOWNING STREET

*From the Private Secretary*

4 June 1979

Restrictive Trade Practices Act : Stock Exchange

The Prime Minister has read your Secretary of State's letter of 30 May to the Chancellor of the Exchequer on the above subject, and she has also seen Martin Hall's letter of 31 May.

The Prime Minister is inclined to agree with Mr. Nott that it would be hard to justify not having the Stock Exchange investigated by the Restrictive Practices Court - at least at this juncture. However, she has noted the Chancellor's view that it would be better if some other body were to carry out such an investigation, and she is content for your Secretary of State and the Chancellor to discuss the matter. If, in the event, they are unable to agree on what should be the best approach she would like to be consulted before a final decision is taken.

I am sending copies of this letter to Martin Hall (HM Treasury), Andrew Duguid (Department of Industry), Martin Vile (Cabinet Office) and John Beverly (Bank of England).

T. P. LANKESTER

Tom Harris, Esq.,  
Department of Trade.

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Handwritten initials, possibly 'DS', in the bottom right corner.

Prin. hntsk

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*W* Mr James  
Mr Wilson



You agreed with Mr Nott's approach (Flag A). The Chancellor does not. Shall I say -  
i) you are inclined to agree with Mr Nott

Treasury Chambers, Parliament Street, SW1P 3AG  
01-233 3000

ii) but he should discuss with the Chancellor

*I am still inclined to agree with Mr Nott - but will look at Chancellor's point if he puts it. Would prefer (iii) - followed given if they disagree*

31st May 1979

iii) They should consult you before taking a final decision?

Der Tom

RESTRICTIVE TRADE PRACTICES ACT : STOCK EXCHANGE

The Chancellor of the Exchequer has seen your Secretary of State's letter of 30th May on this, and wanted me to let you know straight away that he would like to discuss this with him as soon as possible after the Budget.

The Chancellor recognises the problems of removing the Stock Exchange from the scrutiny of the Restrictive Practices Court now that the reference has been made. But it is still his strong view that the Court is the wrong body to review this issue. In his opinion the Court must take the narrow view of the issues which it can consider. He does not believe that delaying removal of the Stock Exchange from the Court's scrutiny until it had become apparent that it was indeed taking the narrow view would make removal any easier to prevent; it could well add to the difficulties. Moreover, by then there would have been considerable nugatory expense and effort by all concerned, and it would be much harder to refer the Stock Exchange to some more appropriate body.

The Chancellor nevertheless fully accepts that the Government's competition policy requires that the practices of the Stock Exchange should be reviewed effectively. He would therefore like to discuss with your Secretary of State the possibilities of review by some more appropriate body at least as robust as the Restrictive Practices Court. This might be a reconstituted Monopolies and Mergers Commission or some ad hoc body. He has serious doubts about the appropriateness of the Wilson Committee.

The Chancellor understands that the note by officials referred to in (but not enclosed with) your Secretary of State's letter had not been discussed/departmentally in its present form. He would therefore like to suggest that,

/if Mr. Nott

T.G. Harris, Esq.,  
Department of Trade



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if Mr. Nott agrees, officials of your Department, the Bank and Treasury, should be asked to examine the options and report back before Ministers discuss this further.

I am sending copies of this letter to Tim Lankester at No.10, Andrew Duguid, John Beverly and Martin Vile.

*Yours ever,*

*MA*

(M.A. HALL)



✓ Mr James  
✓ Mr Wilson

Prin Amst

For information.

From the Secretary of State

The Rt Hon Geoffrey Howe MP  
The Chancellor of the Exchequer  
HM Treasury  
Parliament Street  
London, SW1P 3HE

Ab

30 May 1979

Dear Geoffrey,

RESTRICTIVE TRADE PRACTICES ACT: STOCK EXCHANGE

You will be aware that the Stock Exchange have requested that they should be exempted from the scope of the Restrictive Trade Practices Act, but are prepared, if the Government were to make this a condition of their exemption, to be subjected to some other form of enquiry.

I have considered their case afresh very carefully and Sally Oppenheim has met both the Chairman and the Chief Executive of the Stock Exchange as well as the Director General of Fair Trading to discuss the issues. The attached note sets out the background to the issues and the principal options.

We have, somewhat reluctantly, come to the conclusion that, if the legal proceedings before the Restrictive Practices Court had not already begun, following the rejection in February by Mr Hattersley of the Stock Exchange's early request for exemption, it would have been right to exempt the Stock Exchange from the processes of the Restrictive Trade Practices Act and to subject them to an alternative form of enquiry (possibly the obvious alternative would be the Monopolies and Mergers Commission).

However, the situation is very different now that the reference has been made. If we were now to take action to exempt the Stock Exchange (which would require amending the Restrictive Trade Practices (Services) Order by means of affirmative resolution), this would involve interrupting a legal process which is already in train.



*From the Secretary of State*

The Stock Exchange have argued that the Court is not able to give due weight to the wider implications of its operations. Although it would be possible for the Stock Exchange to seek an early ruling from the Court on this, they have decided, for understandable reasons, that it would not be in the best interests of their case to do so. I am influenced, however, by the DGFT's opinion that the Court will be able to take proper account of most of the wider issues which are of special concern to the Government.

Of the other arguments against exemption, the one to which I attach most importance is that we are just taking powers to strengthen competition policy generally, and, even if we were to couple an announcement of exemption of the Stock Exchange from the processes of the Restrictive Practices Court with a decision to subject it to another form of enquiry, this might be fiercely criticised. There have already been comments in the Press to the effect that if we were to exempt the Stock Exchange at this junction our whole stance on Prices and Competition Policy would be undermined. Such an announcement would also appear odd when we have just announced that we intend to end the Department's control of unit trust management charges, together with the related exemption from the Restrictive Trade Practices Act, and to rely in future on competition.

*Must* I do not believe therefore that we could justify giving special treatment to the Stock Exchange at this juncture. However, this should not rule out the possibility of our agreeing to reconsider the Stock Exchange's request should it become clear, even at a late stage in the proceedings, that the Act was not drafted so as to enable the Court to take account of the wider issues of interest to the Government and to the Stock Exchange. While the granting of exemption at such a late stage (perhaps when the case appeared to be going against the Stock Exchange) would pose its own difficulties, these would be lessened if we made it clear now that we would be prepared to reconsider the claim for exemption if the Court's ability to hear the wider issues is narrower than we believe.



*From the Secretary of State*

I have also considered carefully the option of using the Committee on the Functioning of the Financial Institutions (CFFI). I do not think that its existence makes it any easier to act now to exempt the Stock Exchange, although were we to decide that we wished nevertheless to find an alternative form of enquiry we could consider (with the Treasury) whether there were advantages in using the CFFI rather than the MMC. Alternatively we could decide to let the legal processes continue until we have the final Report of the CFFI which is expected towards the end of the year, and to reconsider the case for exemption in the light of that Report. It would be no more difficult technically to exempt the Stock Exchange at that stage (the Stock Exchange statement of case is not expected until 1930), and the CFFI Report, if it were effectively to support the case for exemption, could be cited as a reason for granting special treatment.

You should also be aware that Mr Goodison claimed that the Bank supported the Stock Exchange's case for exemption, and suggested that before we take a decision on this, we should have a tri-partite meeting with the Stock Exchange and the Bank. Although I doubt whether a tri-partite meeting would be appropriate, you will no doubt wish to take account of the Bank's views.

I understand that you yourself would have preferred the Stock Exchange's case to be considered by the Monopolies and Mergers Commission (as indeed I would) but I hope you will agree that the difficulties of arranging this at the present time are very considerable. If you agree with me, I think it would be right for me to make an early public statement on our decision. In my view it would be criticised by the Stock Exchange (although widely understood by its Members), but it would greatly strengthen the credibility of our Competition Policy.

I am copying this letter to the Prime Minister, to the Secretary of State for Industry and to Sir John Hunt.

*Yours ever -*

JOHN NOTT

*John*

30 MAY 1979



