

For Your Information

Bank Notification Used In Conjunction With A Special Reserve Bank Account For The Exclusive Benefit Of Customers

In order to protect customer cash held at a clearing firm, SEC Rule 15c3-3 requires that customer cash and other customer credits be deposited into a Special Reserve Bank Account for the Exclusive Benefit of Customers (Reserve Account). This requirement serves as a safeguard for investors so that the clearing firm does not utilize these funds for its own use.

In conjunction with this requirement, SEC Rule 15c3-3 (f) requires firms utilizing a Reserve Account to obtain a written notification from the bank, which in effect acknowledges that the bank understands the assets held in the account belong to the clearing firm's customers and as such "shall at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank, and, shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank."

It has recently come to light that some banks are adding language to the notification that pertains to court orders, etc. As such, the following was recently issued to NASD staff from the Securities and Exchange Commission, Division of Market Regulation. Any notification letter for a Reserve Account that a broker or dealer is required to obtain from a bank pursuant to SEC Rule 15c3-3(f) that contains language similar to the following:

[bank] may and is hereby authorized to obey the order, judgment, decree, or levy of any court which order, judgment, decree, or levy relates in whole or in part to the [Reserve] Account.

must also include the following provisions:

1. [bank] shall not assert any claim against the [Reserve] Account.
2. [bank] shall immediately notify the United States Securities and Exchange Commission (SEC), the Securities Investor Protection Corporation (SIPC), and the designated examining authority of the broker or dealer that maintains the [Reserve] Account at [bank] if a legal action is initiated asserting any claim against the [Reserve] Account or if a court order is entered relating to the [Reserve] Account.
3. In the event that any legal action in any court is initiated asserting any claim against the [Reserve] Account, [bank] shall inform the court that the [Reserve] Account is an account maintained at [bank] by a broker or dealer, that the [Reserve] Account was established pursuant to Securities Exchange Act of 1934 Rule 15c3-3, that all cash and/or qualified securities deposited in the [Reserve] Account are being held by [bank] for the exclusive benefit of customers [introduced proprietary accounts] of the broker or dealer in accordance with the regulations of the SEC, and that [bank] has agreed in writing with the broker or dealer that the [Reserve] Account shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of [bank] or any person claiming through [bank].

For more information on this topic, contact Susan DeMando, Member Regulation, NASD Regulation, at (202) 728-8411.