

Special Notice to Members

SEPTEMBER 2005

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading
Training

KEY TOPICS

Rule 6740
SEC Rule 15c2-11
SEC Rule 15c3-3

GUIDANCE

Important Information Regarding the Suspension of Trading in the Securities of Bancorp International Group, Inc. (BCIT.PK)

Executive Summary

NASD is issuing this *Special Notice to Members (Special NTM)* to advise member firms and other interested parties of certain actions and issues relating to the trading of securities of Bancorp International Group, Inc. This *Special NTM* also is intended to remind members of their responsibilities with respect to Securities and Exchange Commission (SEC) Rule 15c2-11 and NASD Rule 6740.

Questions/Further Information

Questions regarding this *Special NTM* may be directed to Susan DeMando, Associate Vice President, Financial Operations, Member Regulation, at (202) 728-8411.

Discussion

On August 31, 2005, the SEC temporarily suspended trading in the securities of Bancorp International Group, Inc. (Pink Sheets—Symbol: BCIT) pursuant to Section 12(k) of the Securities Exchange Act of 1934. In its Release, the SEC stated that it temporarily suspended trading in the securities of BCIT because it appears that all of the securities currently trading in the name of Bancorp International Group, Inc. and purportedly signed by Thomas Megas as President and M. Puig as Secretary are counterfeit. The SEC trading suspension began on August 31, 2005, at 9:30 a.m. E.T., and terminates on September 14, 2005, at 11:59 p.m. E.T.¹ Furthermore, The Depository Trust Company (DTC) issued a special alert regarding BCIT on August 16, 2005, which included a notice that DTC had discontinued all services relating to BCIT, other than custody services, as of August 11, 2005.

Although trading will no longer be suspended, members should exercise great caution when executing customer or proprietary trades, including member-to-member transactions for the purposes of resolving open fails, until such time as members can be assured that the shares in circulation were part of a bona-fide issuance by the issuer.

Members are reminded that, pursuant to SEC Rule 15c2-11 and NASD Rule 6740, no quotation may be entered unless and until a member has complied with all of the requirements of the rules, including SEC Rule 15c2-11(a)(5). SEC Rule 15c2-11(a) requires, among other things, that based on a member's review of the issuer information specified therein, a member must have a reasonable basis under the circumstances to believe that the issuer information is accurate in all material respects and the sources of such information are reliable. Until the questions surrounding the information and documents of Bancorp International Group, Inc. are resolved, member firms should be aware that, in the context of Form 211 filings, NASD has significant concerns as to whether a member would have a reasonable basis to believe the accuracy or reliability of information relating to Bancorp International Group, Inc.

Based on the SEC Release and other information released by the company, member firms should consider the following with regard to BCIT shares:

- 1) Deposit of physical shares by a customer should be scrutinized for authenticity and, at a minimum, should be checked against the outstanding shares recognized by the transfer agent. Firms are reminded of their obligation to "know your customer" under NASD Rules 2110 and 2310 and Section 326 of the USA PATRIOT Act.
- 2) Any purchases should be undertaken with the knowledge that settlement is uncertain given the fact that the National Securities Clearing Corporation (NSCC) will not net obligations through the Continuous Net Settlement (CNS) system and that such trades will need to be settled broker-to-broker.
- 3) Any sales should be completed only to the extent that delivery can be made.
- 4) Member firms are reminded of their responsibilities to comply with the sales practices requirements under SEC Rules 15c-1 through 15c-9.

Additionally, NASD has confirmed the position of the SEC staff relative to the application of SEC Rule 15c3-3(m) Completion of Sell Orders on Behalf of Customers and SEC Rule 15c3-3(d)(2) Requirement to Reduce Securities to Possession or Control. SEC Rule 15c3-3 requires member organizations to take prompt steps to buy-in securities to obtain physical possession or control under paragraph (d) (2) and to complete customer sell orders under paragraph (m). Such buy-in requirements related to BCIT are temporarily suspended until further notice.

Similarly, the NYSE has issued Information Memorandum 05-67 stating that buy-in requirements pursuant to NYSE Rules 282 Mandatory Buy-In and 284 Procedures for Defaulted contracts, if applicable, are also suspended until further notice.

Endnote

- 1 See Securities Exchange Act Release No. 52363 (August 31, 2005).

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