

**INTERPRETATION
MEMO**

Number 78-2

May 26, 1978

SUBJECT: INTERIM UPDATE TO SEC RULES 15c3-1 and 15c3-3
INTERPRETATION

Treatment Of Foreign Banks Under
SEC Rules 15c3-1 and 15c3-3

The SEC has stated that a foreign bank should only be treated as a non-customer broker or dealer for the purpose of making computations pursuant to Rules 15c3-1 and 15c3-3 under certain circumstances.

Interpretations will be added to the Handbook at section (c)(7)/02 for the Uniform Net Capital Rule and section (a)(1)/03 for Customer Protection Reserves and Custody of Securities.

Foreign Banks

- (1) To be treated as a broker, the foreign bank must be engaged in the business of effecting transactions in securities for the account of others within the meaning of Section 3(a)(4) of the '34 Act.
- (2) To be treated as a dealer, the foreign bank must be engaged in the business of buying and selling securities for its own account, through a broker or otherwise, within the meaning of Section 3(a)(5) of the '34 Act.
- (3) In addition, to be treated as either a non-customer broker or a non-customer dealer, the foreign bank must not fall within the definition of "bank" set forth in Section 3(a)(6) of the '34 Act, which provides as follows:

"The term 'bank' means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing

business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under Section 11(k) of the Federal Reserve Act, as amended, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B) or (C) of this paragraph."

If the foreign bank falls within the above definition of a bank, it is to be treated as a customer for purposes of 15c3-1 and 15c3-3.

There are at least three forms of foreign banking operations that you may be doing business with (1) representative offices, (2) agencies and (3) branches. Agencies and branches are subject to certain reporting requirements of the Federal Reserve Board and some states have specific regulations concerning foreign bank entry and operation, including examination and supervision and may be required to be treated as customers. Representative offices generally do not conduct normal banking operations but merely act as liaison offices between the head office and its customers. Generally speaking, there are no state regulations as to examination and supervision of representative offices other than simple registration with the state in which business is being conducted. Representative offices may be eligible for treatment as a non-customer.

(SEC Letter to UBS-DB
Corporation March 5, 1977)
(SEC staff to NYSE)
(78-2, May 17, 1978)

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Page and Index revisions for the above interpretation will be made with the next general update of the Handbook.