

Interpretation Memo

Member Firm Regulation

NYSE

New York
Stock Exchange, Inc.

20 Broad Street
New York, NY 10005

Number 90-8
September 20, 1990

PLEASE ROUTE TO FINANCIAL AND OPERATIONS OFFICER/PARTNER
AND COMPLIANCE AND MARGIN DEPARTMENTS

TO: MEMBERS, MEMBER ORGANIZATIONS AND HANDBOOK SUBSCRIBERS

SUBJECT: WRITTEN AGREEMENT REQUIRED FOR HOLD IN CUSTODY REPURCHASE TRANSACTIONS

The Treasury Department announced recently that government securities broker-dealers must obtain written agreements with their counterparties prior to entering into hold-in-custody repurchase agreements. This was announced in a circular letter to the Federal Deposit Insurance Corp., the Federal Reserve Board, the Office of Thrift Supervision, the Securities and Exchange Commission, the National Association of Securities Dealers and the New York Stock Exchange.

This interpretation necessitates recission and restatement of the present interpretation Rule 15c3-3(b)(4)(i)(A)/01 on page 516 of the Interpretation Handbook. Please remove the present pages 515-516 from the interpretation handbook and insert the new pages 515-516.

The Department of the Treasury circular letter dated August 2, 1990 is reproduced on the reverse herewith for your further reference.

RETAIN ALL INTERPRETATION/INFORMATION MEMOS FOR FUTURE REFERENCE

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DEPARTMENT OF THE TREASURY
BUREAU OF THE PUBLIC DEBT
WASHINGTON, D.C. 20239-0001

August 2, 1990

Dear Mr. Kwalwasser:

We have received inquiries recently concerning the requirement that hold-in-custody repurchase transactions be conducted pursuant to a written agreement as stipulated in the Government Securities Act (GSA) regulations (17 CFR Ch. IV). Specifically, we have been asked whether sections 17 CFR 403.1, 403.4(e), and 403.5(d) could be interpreted such that a government securities broker or dealer could conduct a hold-in-custody repurchase transaction without first having a signed written repurchase agreement in place with its counterparty.

The Department views an executed written agreement as a sound business practice for any type of repurchase transaction and as a fundamental tool for strengthening customer protection, particularly for hold-in-custody repurchase transactions. A written agreement, with the required disclosures, is important to advise the customer of risks that may be associated with these transactions, to clarify the intended nature and the terms of the transactions undertaken between the parties, and to document the obligations agreed to by each party. Thus, the regulations require a signed written repurchase agreement to be in effect before a government securities broker or dealer enters into a hold-in-custody repurchase transaction with a customer.

Accordingly, pursuant to 15 U.S.C. 78o-5(b), we interpret the provisions of 17 CFR 403.1, 403.4(e), and 403.5(d) to require government securities brokers and dealers to obtain executed written agreements with their counterparties prior to entering into hold-in-custody repurchase transactions.

This interpretation is being sent to the Securities and Exchange Commission, each appropriate regulatory agency for depository institutions, the National Association of Securities Dealers, and the New York Stock Exchange. Pursuant to 17 CFR 400.2(c)(7)(i), this letter will be made immediately available to the public.

Sincerely,

Richard L. Gregg
Commissioner

Mr. Edward Kwalwasser
New York Stock Exchange
11 Wall Street
New York, New York 10005