Interpretation Memo

Member Firm Regulation

NYSE
New York
Stock Exchange, Inc.

20 Broad Street
New York, NY 10005

Number 91-6
July 9, 1991

TO: MEMBERS AND MEMBER ORGANIZATIONS

ATTENTION: CHIEF EXECUTIVE, FINANCIAL, AND OPERATIONS OFFICERS/PARTNERS

SUBJECT: LOANS COLLATERALIZED BY FIXED AND OTHER ASSETS NOT READILY CONVERTIBLE INTO CASH

SEA Rule 15c3-1 disallows value for assets not readily convertible into cash. However, under the provisions of subparagraphs (c)(1)(viii) and (c)(2)(iv), value may be allowed to the extent such assets are pledged as collateral for a loan. These provisions apply only to fixed liabilities which are adequately secured either:

- o by assets acquired for use in the ordinary course of the broker-dealer's trade or business, or

- o by assets where the sole recourse of the creditor for default of such liability is to the assets which collateralize the liability.

SEC staff recently advised that "fixed liabilities" are liabilities with remaining maturity of one year or more. Any portion of the liability which matures in less than one year is considered a current liability and may not be deducted from the corresponding non-allowable assets in determining net capital charges.

Further, the SEC interpretation applies to liabilities for which the sole recourse of the creditor for non-payment of such liability is to the asset as well as to liabilities for which the creditor has recourse to other assets of the broker-dealer.

Under NYSE Rule 326, such liabilities are required to be reported by member organizations as a withdrawal of capital six months before the liability becomes non-allowable as offsets to assets not readily convertible into cash for SEA Rule 15c3-1. Therefore, only loans with remaining maturities of 18 months or more will be considered allowable offsets for NYSE Rule 326 and only for the scheduled payment amounts due beyond 18 months.

NYSE Rule 328 requires all such loan agreements to be submitted to the Exchange for approval.

Presently, SEC requires that the Designated Examining Authority determine the adequacy of the collateral pledged. Therefore, as a matter of policy, the Exchange will not, in the future, accept for review or approval, under subparagraphs (c)(2)(viii) and (c)(2)(iv) of Rule 15c3-1, any new, renewal or extended loan agreements except where sole recourse for the liability is to the collateral.

We will, however, accept capitalized leases of computer and telephone equipment acquired in the ordinary course of business or where the lessor's sole recourse is limited to the leased equipment, in accordance with SEC no-action letter to NASD dated April 17, 1986. (See 15c3-1(c)(2)(iv)(A)/01). Capitalized leases of computer and telephone equipment must relate to newly purchased equipment.

Generally, if payment of the liability under any of the above provisions could be required by the lender on demand or is expected to be made in less one year and six months, it shall be considered a scheduled capital withdrawal to be included in a member organization's 326 ratio and reported as such in all FOCUS report submissions. Specifically it should be reported in Part I item 4880, Part II, page 11; or for those firms filing Part IIA, page 7.

In order for such liabilities not to be considered as scheduled capital withdrawals under Rule 326, the agreements covering the loans must meet certain standards relating to any provisions which would accelerate maturity, including events of default. Generally speaking, acceptable acceleration provisions would be treated in the same manner as an "Event of Acceleration" and an "Event of Default" as defined and interpreted pursuant to SEC Rule 15c3-1, Appendix D. However, all six-month time delays are hereby modified to read 18 months. Refer to Information Memo 80-66.

SEC will allow a transition period of three years to provide time for existing loans to comply with the interpretation. New loans and renewals, extensions or rollovers must be in compliance as of the date of issue of this Interpretation Memo.

Questions and comments should be directed to your organization's finance coordinator.

Attached are updated handbook pages which are being distributed as replacements for existing pages. The following should be carefully reviewed before insertion into the Handbook.

SEC Rule 15c3-1 Page & References	Subject
139, 15c3-1(c)(1)(viii)/03	Fixed liabilities - Remaining Maturity of one Year or More
149-1, 15c3-1(c)(2)(iv)/011	Fixed liabilities - Definition
153, 15c3-1(c)(2)(iv)(A)/01	Capitalized Leases

Remove Pages	Add Pages
139 - 140	139 - 140
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