Interpretation Memo

NYSE
New York
Stock Exchange, Inc.

Member Firm Regulation

20 Broad Street
New York, NY 10005

Number 93-5
September 9, 1993

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

TO: MEMBERS, MEMBER ORGANIZATIONS AND HANDBOOK SUBSCRIBERS

SUBJECT: READY MARKETABILITY OF FOREIGN EQUITY SECURITIES SEC RELEASE 34-32748 AND RELATED "NO ACTION" LETTER

The SEC Division of Market Regulation recently issued a "concept release" on the treatment of foreign equity securities under the ready market provisions of subparagraphs (c)(2)(vii) and (c)(11) of SEA Rule 15c3-1 ("Net Capital Rule"). The release solicits comments on the overall subject of the net capital treatment of foreign equity securities. A copy is attached for your reference.

In addition, the SEC has taken an interim "no action" position relating to the treatment of certain foreign equity securities under the Net Capital Rule (See letter to the Securities Industry Association dated August 13, 1993, copy attached for your reference).

The "no action" letter permits broker-dealers to treat foreign equity securities that are listed on the FT-A World Indices as having a ready market for the purposes of subparagraphs (c)(2)(vii) and (c)(11) of the Net Capital Rule. The letter also withdraws all prior staff opinions relating to the ready marketability of foreign equity securities, including the December 29, 1975 letter which specified ready market treatment for securities listed on principal exchanges in defined major money markets outside the United States. It should be noted that Interpretation 15c3-1(c)(2)(vii)/01 still applies to positions in foreign equity securities.

Comments on the release should be received by the Commission on or before October 16, 1993. All comment letters should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth St. NW, Washington, D.C. 20549 and should refer to File No. S7-24-93. A copy of the comment letter should be sent to your Finance Coordinator.

Any questions concerning this memo should be directed to your Finance Coordinator.

certification In addition, the manufacturer must

(i) Re-assess the software integrity level (paragraph 3.a.) of the revised computerized AFM,

(ii) Demonstrate that the revisions do not affect any of the unrevised portions of the computerized AFM; and

(iii) Demonstrate that the revisions are compatible with the hardware and software environment intended for the AFM software application

(3) When revisions are incorporated, a means (e.g., document) of indicating those parts of the software that have been changed must be provided.

(4) Each revised software element must be identified in the same manner as the original with the exception of the new date and/or revision notation (see 3 a.(3))

e. Submittal and FAA-Approval of Software.

(1) The manufacturer will be considered the responsible party for all matters pertaining to AFM application software, including submitting for, and obtaining FAA-approval.

(2) Data structures and calculation models shall be discussed between the manufacturer and the FAA, and agreement obtained.

(3) The manufacturer is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of the computer program.

(4) The FAA may require assessment of program details and data structures as deemed necessary to allow judgement about software integrity. Any hardware environment required to accomplish this which is not readily available to the FAA shall be provided by the manufacturer.

(f) Documentation Requirements. Documentation containing the following information shall be provided to the FAA for agreement before FAA-approval is granted.

(1) Approval Plan that describes the software aspects of certification, including an outline of the desired applications, design objectives for software and data integrity, and a statement to the effect of impact on flight safety.

(2) Software Development Plan, including methods to provide the design objectives.

(3) Software Descriptions, including substantiation that program structures and calculation models are appropriate to their intended function.

(4) Data Conformity Document, including substantiation for data conformity of airplane performance characteristics (e.g., tested performance data) and the developed software (e.g., FAA-approved data files) and/or generated output.

(5) Operating Instructions, that include all information for proper use of the AFM software, including installation instructions and identification of suitable hardware and software environment.

(6) Software Configuration Reference, including a log of approved software elements.

4. Provisions for FAA Post Certification Access to Computerized portion of AFM. In the plan for software aspects of certification, the manufacturer must propose which components of the computerized AFM will be submitted to the FAA. In cases where the AFM software application can be installed on FAA equipment, then only the AFM software application, which includes the installation data and operating guide need be provided. However, if the AFM software application requires a hardware and software environment that is not available to the FAA, then the manufacturer must also provide to the appropriate FAA certification office, access to the necessary components for the hardware and software environment.

Issued in Renton, Washington, on August 10, 1993

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100

[FR Doc. 93-20185 Filed 8-19-93; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-32748; File No. S7-24-93]

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Concept release, request for comments.

SUMMARY: The Securities and Exchange Commission (the "Commission") solicits comment on a number of questions regarding the treatment of foreign equity securities under the "ready market" provisions of the net capital rule, Rule 15c3-1, under the Securities Exchange Act of 1934 ("Exchange Act"). Following receipt of public comments, the Commission will determine whether proposed rulemaking or other action is appropriate In the interim, the Commission is authorizing the Division of Market Regulation ("Division") to issue a no-action letter as to relief to be accorded foreign equity securities under the ready market provisions. The Commission seeks comment on whether this treatment should be revised.

DATES: Comments should be received on or before October 16, 1993

ADDRESSES: People wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW , Washington, DC 20549 All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, (202) 272-2904, Michael P. Jamroz, Branch Chief, (202) 272-2372, or Timothy H. Thompson, Staff Attorney, (202) 272-2398.

SUPPLEMENTARY INFORMATION:

I. Introduction

In determining a broker-dealer's net capital under Rule 15c3-1 of the Securities Exchange Act of 1934, the net capital rule ("Rule"), the broker-dealer deducts from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables, and certain percentage deductions related to the securities and commodity positions that it carries. Paragraph (c)(2)(vii) of the Rule requires a 100% deduction for securities held by the broker-dealer for which there is no "ready market" as defined in paragraph (c)(11) of the Rule.

Paragraph (c)(11) defines a ready market to "include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom." [1]

Generally, for domestic equity securities, the Rule has recognized as liquid those securities which are traded

[1] The Rule also deems a ready market to exist where securities have been accepted as collateral by a bank where the broker-dealer can demonstrate that the excess of the market value of the securities over the amount of the loan is sufficient to make the loan acceptable as a fully secured loan to banks regularly making secured loans to brokers and dealers.

on the United States securities exchanges, NASDAQ securities, and certain other OTC securities where the broker-dealer can demonstrate that there are independent market makers for the security who quote the securities in an inter-dealer network.[2]

With respect to foreign securities, in December 1975, the Division of Market Regulation ("Division") issued an interpretive letter deeming a "ready market" to exist in certain circumstances.[3] Specifically, as described in that letter, only foreign equity securities that were publicly issued in a principal securities market and were listed on one of the principal exchanges in the major money markets outside the United States were deemed to have ready markets and receive haircuts similar to comparable United States securities traded on United States markets. The 12 exchanges in 11 countries which the Division recognized as being "principal exchanges in the major money markets" are: Amsterdam, Brussels, Frankfurt, Johannesburg, London, Luxembourg, Montreal, Paris, Sydney, Tokyo, Toronto, and Zurich.

II. Concerns With the 1975 Approach

The Securities Industry Association ("SIA") has requested that the Commission adopt the FT–Actuaries World Indexes ("FT–A World Indexes")[4] as a ready market test for foreign equity securities.[5] The SIA believes this treatment will more accurately reflect the liquidity of foreign securities in today s markets. The SIA suggests that the Division's current ready market interpretation could hinder U.S. broker-dealers in the global marketplace for securities.

The FT-Actuaries World Indexes are indices on exchanges from 24 countries[6] and are jointly compiled by The Financial Times Limited, Goldman, Sachs & Co. and County NatWest/Wood Mackenzie (together, the "Consortium") in conjunction with The Institute of Actuaries and the Faculty of Actuaries.[7]

The Consortium generally attempts to include the largest, most liquid exchanges in its indexes so long as they meet certain standards for data dissemination and international interest. In determining which issues to include from a particular exchange, the Consortium subjects the issues listed on the exchange to five tests to screen out any small capitalization, illiquid, or restricted ownership stock. The Consortium also considers the economic sectoral make-up of a market before determining which individual stocks to include.

In an earlier letter, the Capital Committee of the SIA stated that "the interpretation of 'ready market' contained in the 1975 letter . . . no longer accurately assesses the liquidity of foreign securities and results, in some cases, in onerous haircuts on securities that trade in what are in fact demonstrably liquid markets."[8] The Capital Committee argued that since 1975 "new foreign securities markets have been established and the volume of trading in foreign securities by U.S. broker-dealers has increased significantly."

An objective approach that recognizes the most liquid individual securities from a large number of markets may be preferable to recognizing the stocks listed on particular exchanges in total for a number of reasons. First the process of recognizing ready markets can raise sensitive perception concerns for foreign markets. The use of an objective approach which recognizes some securities from virtually all developed markets would solve most of these concerns. It also would, in the case of the SIA proposal, shift responsibility to a credible group which compiles a widely-followed index. Moreover, it would avoid the difficulties inherent in a case-by-case determination by the Commission of ready market status; reliance would be placed on the objective determination of the index compilers. Second, the objective approach would eliminate the incongruity of giving capital value to illiquid securities listed on a recognized exchange while giving no value to world class securities which are traded on exchanges not now recognized.

III. Questions for Comment

The Commission seeks comment on whether it would be advisable for the Commission to recognize privately prepared indexes for ready market purposes. The Commission also seeks comment on whether the advantage of having a system where the most liquid securities generally are considered to be readily marketable outweighs problems that may arise from the Commission adopting this role. Finally, the Commission seeks recommendations on alternative approaches.

By the Commission

Dated: August 16, 1993

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 93–20140 Filed 8–19–93; 8:45 am]

BILLING CODE 8010-01-P

[2] If a broker-dealer holds a large position of a particular security measured in relation to the normal trading volume in that security (a blockage), the broker-dealer has the burden of proof of showing to its designated examining authority that the amount in excess of a certain trading volume has a ready market. Otherwise he must take a 100% haircut on the excess amount. The aggregate of the most recent four week inter-dealer trading volume in the security is treated as readily marketable by the broker-dealer. *See* letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Edward Kwalwasser, Esq., Senior Vice President, New York Stock Exchange Inc., and Thomas R. Casselia, Vice President, National Association of Securities Dealers, Inc., dated October 5, 1987.

[3] Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to Anthony M. O'Connor, Co-Chairman, International Committee, SIA, dated December 29, 1975.

[4] The markets represented in the FT–A World Indexes and the number of securities from each market (in parentheses) are: 1. Austria (18), 2. Belgium (42), 3. Denmark (33), 4. Finland (23), 5. France (98), 6. Germany (62), 7. Ireland (15), 8. Italy (73), 9. Netherlands (24), 10. Norway (22), 11. Spain (46), 12. Sweden (36), 13. Switzerland (55), 14. United Kingdom (219), 15. Canada (108), 16. United States (519), 17. Australia (68), 18. Hong Kong (55), 19. Japan (470), 20. Malaysia (69), 21. New Zealand (13), 22. Singapore (38), 23. Mexico (18), and 24. South Africa (60). As of Friday, June 4, 1993. Source: Financial Times.

[5] Letter from Dominic Carone, Chairman, Capital Committee, SIA, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, dated October 8, 1992. By letter dated August 13, 1993 the Division took a no-action position in which it stated that broker-dealers may treat foreign equity securities listed on the FT–A World Indexes as having a ready market for purposes of Rule 15c3–1 of the Exchange Act. That letter withdrew the applicability of all prior staff opinions relating to the ready marketability of foreign equity securities, including the 1975 letter referred to in footnote 3.

[6] All U.S. securities would continue to be considered readily marketable if they are quoted on an established securities market. Of the 2,184 equities on the FT–A World Indexes as of June 4, 1993, 519 are U.S. securities.

[7] The Faculty of Actuaries and the Institute of Actuaries are two professional actuarial societies based in the United Kingdom. These societies have participated in the development and calculation of indexes on the UK market since 1929.

[8] *See supra*, note 5.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Aminorex into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place aminorex into Schedule I of the Controlled Substances Act (CSA) This proposed action by the DEA Administrator is based on data gathered and reviewed by the DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

August 13, 1993

Dominic A. Carone
Chairman
Capital Committee
Securities Industry Association
120 Broadway
New York, New York 10271

Re: Ready Marketability of Foreign Equity Securities

Dear Mr. Carone:

Your letter, dated October 8, 1992,1/ requests on behalf of the Capital Committee of the Securities Industry Association ("SIA"), that the Division of Market Regulation ("Division") advise the SIA, on behalf of its members and similarly situated broker-dealers, that the Division will not recommend that the Commission take enforcement action if broker-dealers treat the foreign equity issues that are listed on the FT-Actuaries World Indexes (the "Indexes") as having a ready market with respect to the ready market and haircut provisions of Rule 15c3-1 of the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c3-1) ("Rule").

I.

In determining a broker-dealer's net capital under the Rule, a broker-dealer is required generally to deduct from net worth as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, most unsecured receivables, and certain percentage deductions related to the securities positions that it carries. Paragraph (c)(2)(vii) of the Rule includes a 100% deduction for securities held by a broker-dealer for which there is no ready market as defined in paragraph (c)(11) of the Rule. A lesser deduction is required for securities which are deemed to have a ready market.

With respect to foreign securities, in December 1975, the Division issued an interpretive letter deeming a "ready market" to

---

1/ Letter from Dominic A. Carone, Chairman, Capital Committee, Securities Industry Association, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, dated October 22, 1992.

exist in certain circumstances.2/ Specifically, as described in that letter, only foreign equity securities that were publicly issued in a principal securities market and are listed on one of the principal exchanges in the major money markets outside the United States are deemed to have ready markets and receive haircuts similar to comparable United States securities traded on United States markets. The 12 exchanges in 11 countries which the Division recognized as being "principal exchanges in the major money markets" are: Amsterdam, Brussels, Frankfurt, Johannesburg, London, Luxembourg, Montreal, Paris, Sydney, Tokyo, Toronto, and Zurich.3/

In your letter, you state that "since 1975, new foreign securities markets have been established and the volume of trading in foreign securities by U.S. broker-dealers has significantly increased," thus, causing U.S. broker-dealers to compete in a global marketplace. You argue that U.S. broker-dealers are adversely affected in this global marketplace because the interpretation of ready market contained in the 1975 letter no longer accurately assesses the liquidity of foreign equity securities. Thus, the SIA Capital Committee recommends that the Division recommend no action if broker-dealers treat the foreign equity securities listed on the FT-Actuaries World Indices as having a ready market.4/

II.

The FT-A World Indices are jointly compiled by The Financial Times Limited, Goldman, Sachs & Co., and County NatWest/Wood Mackenzie (together, the "Consortium") in conjunction with The Institute of Actuaries and The Faculty of Actuaries. The aim of the Consortium was to create and maintain a series of high-quality equity market indices for use by the global investment community.

The Consortium reviews annually the exchanges to be included in the indices. In determining which exchanges to include the

---

2/ Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to Anthony M. O'Connor, Co-Chairman, International Committee, SIA, dated December 29, 1975.

3/ Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to Anthony M. O'Connor, Co-Chairman, International Committee, Securities Industry Association, dated December 29, 1975.

4/ The components of the Indices will be made available to the New York Stock Exchange and the National Association of Securities Dealers on a quarterly basis for distribution to their members. Reliance may be placed on the quarterly Indices until publication of the following quarterly Indices.

Consortium looks at the following criteria: direct equity investment by non-nationals must be available; accurate and timely data must be available; no significant exchange controls should exist which would prevent the timely repatriation of capital or dividends; significant international investor interest in the local equity market must have been demonstrated; and adequate liquidity must exist.

We understand that, in determining which issues to include on the Indices the Consortium subjects the issues listed in the different markets to five investibility screens to determine the investible universe. The first screen, the Size Screen, excludes the bottom 5% of any market's capitalization. The second screen, the Total Restriction Screen, excludes any foreign security which foreign investors are barred from owning. The third screen, the Partial Restriction Screen, excludes a portion of the capitalization of an issue where the security has restrictions on foreign ownership. A fourth screen, the "Free Float" Screen, generally excludes a security where one or more identifiable holders acting in concert holds more than 75% of the outstanding issue. The fifth screen, the Liquidity Screen, excludes any security that fails to trade for more than fifteen working days within each of two successive quarters.

Once the Consortium has determined the investible universe for a given market, it selects constituent stocks in order to capture about 85% of this investible universe. The Consortium also determines the economic sectoral make-up of each market before determining the individual stocks to include. The stocks are selected so that the index reflects the economic sector distribution of the investible universe.

III.

Based on the above, the Division will not recommend to the Commission that enforcement action be taken as to section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-1 thereunder if broker-dealers treat foreign equity securities listed on the FT-A World Indices as having a ready market for the purposes of the Rule. These securities will be subject to the haircuts specified under paragraph (c)(2)(vi)(J). All prior staff opinions relating to the ready marketability of foreign equity securities, including those contained in the letter to Anthony O'Connor of the SIA International Committee, dated December 29, 1975, are hereby withdrawn and should not be relied upon. You also should note that this letter is not intended to validate the use of the Indexes in any other context, but that the relief provided by this no-action letter is limited specifically to the terms herein.

You should be aware that this is a staff position with respect to enforcement action only and does not purport to express any legal conclusions. This position is based solely on the foregoing

description; any factual variations may warrant a different response. This position may be withdrawn or modified if the staff determines that such action is necessary in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of the securities laws. In any event, the position stated herein will be reviewed by June 30, 1995. We expect to work with your Committee in determining the efficacy of this approach.

Sincerely,

Michael A. Macchiaroli
Associate Director