

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

August 23, 1983

Michael B. Glick, Esq.

Cahill Gordon & Reindel

Eighty Pine Street

New York, New York 10005

Dear Mr. Glick:

This is in response to your letter of February 23, 1982 in which you request the Division's confirmation of your interpretation of paragraph (c)(4) of Rule 17a-5 of the Securities Exchange Act of 1934 (17 CFR 240.17a-5) as to when a person is deemed a "customer" of a broker-dealer for purposes of furnishing "customer statements" as required by Rule 17a-5(c)(1).

Paragraph (c)(1) of Rule 17a-5 in pertinent part requires every broker or dealer, unless specifically exempted, to send to its customers both audited and unaudited financial statements as prescribed by paragraphs (c)(2) and (c)(3) of the rule, respectively. The term "customer" as defined by paragraph (c)(4) includes:

... any person [other than certain excluded persons]... for or with whom a broker or dealer has effected a securities transaction in a particular month, which month shall be either the month preceding the balance sheet date or the month following the balance sheet date in which the statement is sent. The term "customer" also includes any person for whom the broker or dealer holds securities for safekeeping or as collateral or for whom the broker or dealer carries a free credit balance in the month in which customers are determined for purposes of this paragraph (c).

Paragraphs (c)(2) and (c)(3), respectively, require broker-dealers to send to customers audited financial statements within 105 days after the date of the audited report and unaudited financial statements no later than 65 days after the date as of which the unaudited statements are prepared.

It is the view of the Division that in determining to whom the broker-dealer must send the required financial statements the broker-dealer may choose: (1) the

month of the balance sheet date, if it is at month-end; (2) if the balance sheet is not at month end, the 30 day period preceding the balance sheet date; (3) any month following the balance sheet date if that month is the month in which the statements are mailed, if it is at month end; (4) if the date the statements are being mailed is not at month end, the 30 day period preceding the date on which the statements are mailed.

Thus, for example, if a broker-dealer's audited balance sheet is as of December 31, 1983, the broker-dealer may choose to send the required financial statements to those persons who were "customers" in December. In addition, the broker-dealer could send the statements to those persons who were customers in January, February, March, if the statements are sent at month-end in the month so chosen. With respect to the June 30, 1984 unaudited financial statements, the broker-dealer in the above example may choose to send the statements to those persons who were "customers" in June or alternatively to those who were "customers" in July or August, if the statements are sent at month-end in the month so chosen. However, if the broker-dealer's unaudited balance sheet date is as of December 15, 1983, the broker-dealer may choose to send the statements to persons who are "customers" on or after November 15 but before December 15, 1983. In addition, if the statements were to be sent on February 15, 1984, then the broker-dealer must send the statements to persons who are "customers" on or after January 15, 1984, but before February 15, 1984.

It should be noted that the term "customer" includes not only those persons for or with whom the broker-dealer effected a transaction in a particular month but also any person for whom the broker-dealer holds securities for safekeeping or as collateral or for whom the broker-dealer carries a free credit balance in that particular month.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Michael A. Macchiaroli

Assistant Director

CAHILL GORDON & REINDEL

EIGHTY PINE STREET

NEW YORK, N.Y. 10005

February 23, 1982

Re: Rule 17a-5 of the Securities Exchange Act of 1934

Dear Mr. Macchiaroli:

I am writing, pursuant to your request, in order to obtain confirmation of my understanding of your views regarding the operation of Rule 17a-5 under the Securities and Exchange Act of 1934 (the "Act"). As I indicated during our telephone conversations on February 19 and 22, I am specifically concerned with ascertaining the particular month in which a person is deemed a "customer" of a broker-dealer, as defined in 17a-5(c)(4), for purposes of furnishing "customer statements" to customers of broker-dealers as required by 17a-5(c)(1).

During our conversation yesterday, you agreed, I believe, that 17a-5(c)(4) is properly construed as affording broker-dealers a choice: either to send "customer statements" to those persons for whom transactions are effected during the month preceding the balance sheet date, or, alternatively, to send them any time subsequent to the balance sheet date to those persons for whom transactions are effected during the month in which the statement is sent. Of course, this latter alternative must be read in conjunction with 17a-5(c)(2) and (c)(3) which respectively require that audited statements be sent within 105 days after the date of the audited report and that unaudited statements be furnished within 65 days after the unaudited statements are prepared.

Therefore, in the fact situation which we discussed, that of a broker-dealer whose audited balance sheet is dated December 31, 1981, you agreed that said broker-dealer may properly choose to send audited "customer statements" to persons for whom he effected a transaction during December, or, alternatively, persons for whom he effected transactions in either January, February or March, depending upon which month the statements are sent. If, for example, the broker-dealer began sending the statements March 1, 1982, he would then be required to send

statements to all persons for whom he effected a transaction in March. The broker-dealer must, however, send all the required statements within 105 days of December 31, 1981.

I would very much appreciate your confirming by letter my understanding, as reflected above, of 17a-5. If you have any questions or comments, please call the undersigned, or Jon Mark, collect at (212) 825-0100. I would also like to thank you for taking the time to discuss 17a-5 with me during our telephone conversations.

Sincerely,

Michael B. Glick