

M.A. SCHAPIRO & CO., INC.

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

October 06, 1982

The Division of Market Regulation

Securities and Exchange Commission

500 North Capitol Street

Washington, D.C. 20549

Attention: Michael Macchiaroli, Esq.

Gentlemen:

M.A. Schapiro & Co., Inc. (the "Company") is a registered broker-dealer whose customer business is primarily with institutions, not individuals. All of our securities transactions are made on a receipt versus payment, delivery versus payment basis. We do not maintain any customers' accounts as to cash or securities, nor do we maintain margin accounts. All physical deliveries of securities are made to our clearing agent, Irving Trust Company, who, together with the Depository Trust Company (OTC), keeps physical possession of all securities. Irving Trust Company, in effect, acts as agent for our customers where the securities or the funds are not immediately available. We do not maintain or hold customers' funds or ~customer-account securities", all of which are held in an escrow account at Irving.

It has been our practice to treat fails-to-receive from our customers as equivalent to fails-to-receive from broker-dealers creating liabilities in accordance with the standard aging criteria and to "haircut" the underlying securities in our inventory long positions. We have for accounting purposes and for purposes of computing net capital treated fails to receive from customers consistently in the manner described for as long as anyone currently at the Company can recall (in excess of 20 years). In our NASD audits for 1980 and 1981, the NASD has objected to this treatment, taking the position that the only proper treatment of a customer failing to deliver to us is the creation of an immediate customer credit with accompanying

haircut to our Inventory. We compute our capital in accordance with the traditional method and, because of the nature of our business described above, have very low capital requirements. Our failure to treat fails to receive from customers in the manner the NASD prefers has never resulted in our being undercapitalized.

With reference to the foregoing, it should be noted that our auditors, Arthur Young & Company, have issued their audit report on our fiscal year end Focus Report X-17 A-5, Part III and have not taken exception to our method utilized in preparing our year end focus report and related capital computation.

By this letter, we are requesting the Division of Market Regulation to advise us that the Division will not recommend that the SEC take action against the Company for violations of Rule 15C3-1, if we continue to account for fails to receive from customers in the manner we have done so in the past which is described above. We make this request because we believe in light of the manner in which we do business, that requiring us to treat fails to receive from customers as creating customer credits makes no sense.

As indicated above, we carry no customer accounts as to cash or securities and all our business is conducted on RVP and DVP basis. Accordingly, no liability is created on our part to our customers when a customer fails to deliver to us. Furthermore, fails to deliver on the part of our institutional customers are normally due to the same problems which create fails among broker-dealers, that is, settlement difficulties.

We understand that we could diminish the significance of customer fails by electing to compute capital in accordance with the alternative method. This would require greater expense and more complex recordkeeping and we do not believe that any legitimate regulatory goal would be satisfied by such a change. Furthermore, were we to make such an election and assume the burden of such additional expenditures, we would consider attempting to decrease our other costs, perhaps by eliminating the use of Irving Trust Company as agent for holding customer funds and securities. It would be unfortunate if we were to have to cut back in the provision of this extra customer protection for the purpose of technical compliance with the treatment of fails to receive from customers, which will result in no real additional protection for our customers.

Accordingly, we request your advice that the Division will not recommend that the SEC take action against the Company if the Company continues to treat fails to receive from customers in the manner in which we have done so in the past.

Sincerely,

Carmine A. DeVito

Treasurer

June 7, 1983

Carmine A. DeVito

Treasurer

M.A. Schapiro & Co., Inc.

One Chase Manhattan Plaza

New York, New York 10005

Dear Mr. DeVito:

This letter is in response to your letter of October 6, 1982 on behalf of M.A. Schapiro & Co., Inc. ("Schapiro") wherein you request a no action letter from the Commission regarding Schapiro's treatment of payables arising out of transactions with its institutional customers under Exchange Act Rule 15c3-1 (17 CFR 240.15c3-1).

You state that it has been Schapiro's long standing practice to treat non-delivery of securities by institutional customers on settlement date as the equivalent of "fails to receive" from broker-dealers. One suggested reason for this treatment is that late delivery on the part of institutional customers are normally due to the same problems which create fails among broker-dealers. Additionally, you are of the opinion that technical compliance with Rule 15c3-1 would result in no additional protection for M.A. Schapiro's customers.

It is the view of the Division that payables arising out of transaction with institutional customers cannot properly be treated as "fails to receive" from broker-

dealers. Although not specifically defined in Rule 15c3-1, the "fail to receive" concept has always been thought to be limited to transactions between brokers and dealers. See e.g., American Institute of Certified Public Accountants, Audits of Brokers and Dealers in Securities(1973),p. 199.

Rule 15c3-1 is designed to insure that a broker-dealer has sufficient liquid assets and does not incur Indebtedness far in excess of Its net capital. The treatment of payables arising out of transactions with institutional customers as equivalent to "fails to receive" is inconsistent with the essential purpose of the rule, which links a firm's net capital requirement to indebtedness arising from customer transaction.

Consequently, the Division cannot grant your no action request regarding Schapiro's treatment of payables arising out of transactions with institutional customers.

Sincerely,

Steven J. Gray

Staff Attorney

cc: Thomas Costa/NASD