

M.E. Allison & Co., Inc.

National Bank of Commerce Building

San Antonio, Texas 78205

March 25, 1987

FEDERAL EXPRESS

Mr. Michael A. Macchiaroli

Assistant Director

Division of Market Regulation

Securities and Exchange Commission

Washington, DC 20549

Re: Interpretation of Uniform Net Capital Rule (Rule 15c3-1)

Dear Mr. Macchiaroli:

We request your interpretation of the allowability of financial advisory fees receivable of a municipal bond dealer in the computation of net capital pursuant to Rule 15c 3-1.

Financial advisory fees represent income earned by providing assistance to municipalities in connection with the issuance of bonds. Generally, the fee is paid out of the bond proceeds at the time of closing. For many municipal bond dealers, financial advisory fees represent a major line of business.

Rule 15c3-1, does not address financial advisory fees. However, Subparagraph (c)(2)(iv)(E) permits receivables, outstanding for less than 30 days, for interest, floor brokerage, commissions, mutual fund concessions, management fees from registered investment companies, dividends, and receivables outstanding for less than 60 days due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts.

It would appear that the intention of Subparagraph (c)(2)(iv) is to include as allowable assets, current receivables which arise from activities essential to the main business activities of a broker/dealer. More importantly, it would appear that

financial advisory fees represent a receivable identical in nature to receivables from "participation In municipal securities underwriting syndicates".

We would appreciate your interpretation of how such fees, outstanding for less than 60 days or, alternatively, 30 days, should be treated in the computation of net capital.

Very truly yours,

E. James Seal

Senior Vice President

THE FINANCIAL ADVISOR'S FEE

Regardless of whether there are items included within the financial advisor's fee other than professional services and regardless of the complexity of the financing program, the financial advisor will customarily name a fee which is expressed in dollars per amount of bonds issued and delivered to a purchaser. In most instances the amount of bonds to be issued will be unknown at the time a financial advisory contract is executed. Under such circumstances the financial advisor will more than likely attach a schedule from which the final fee will be computed.

Those factors which bear on the total fee:

1. The amount of the financing to be accomplished; the size of the program.
2. Those items of expense, in addition to compensation for professional services, which the financial advisor is required by the contract to assume.
3. The complexity of the financing program through any of the circumstances listed in Section V or through any number of others not named.

The amount of the fee will be determined by the complexity of the program and the qualifications and experience of the financial advisor. Selection should be made on the basis of professional competence and not solely on the basis of a quoted fee.

The fee is payable upon delivery of the bonds to purchasers and the receipt of funds by the issuing agency unless, under unusual circumstances, there may be provisions for a partial payment at an earlier date. The fee is, of course, property payable from bond proceeds as any other cost of the program. That portion of

the fee which represents compensation for professional services, as opposed to reimbursement of cash outlay, will be based on the complexity of the program and the amount of time and the degree of skill and experience required of the financial advisor. Experienced and reputable firms will have ready for submission a list of those issuing agencies which they have served in a similar capacity.

Mr. E. James Seal

Senior Vice President

M.E. Allison & Co., Inc.

National Bank of Commerce Building

San Antonio, Texas 78205

Dear Mr. Seal:

We have received your letter dated March 25, 1987 on behalf of M.E. Allison & Co., Inc. ("Allison") wherein you request an interpretation of the treatment of financial advisory fees receivable in the computation of net capital pursuant to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934.

In your letter you describe the asset of Allison as follows: Financial advisory fees represent income earned by providing assistance to municipalities in connection with the issuance of bonds. Generally, the fee is paid at the time of closing from the proceeds of the issue. The receivable from the Issuing municipality to the financial adviser is unsecured.

Generally speaking, in the computation of net capital, subparagraph (c)(2)(1v)(E) of Rule 15c3-1 requires any portion of a receivable that is unsecured to be deducted from net worth. You note that subdivision (C) of the same subparagraph provides a limited exception to this rule for certain receivables outstanding less than a specifically prescribed number of days. The provision is for "receivables due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts which are outstanding ..• sixty (60) days "XAD or less "XBD from settlement of the underwriting with the Issuer... It is this

exception that you believe applies to your financial advisory fees receivable.

In December 1978, the Commission amended Rule 15c3-1(c)(2) (iv)(C) to read as it does today. "X6A 1 As originally adopted, the rule required all profits derived from the participation in an underwriting syndicate to be treated as "unsecured receivables" under subdivision (E); as such, they were deducted from net worth. In November of 1975 the Commission temporarily adopted amendments to Rule 15c3-1(c)(2)(iv)(C) permitting the inclusion in net worth, for ninety (90) days after settlement of the underwriting with the issuer, receivables arising from participation in municipal securities underwriting. "X6A 2 The Commission's December 1978 action reduced this ninety (90) day period to sixty (60) days.

This paragraph was based upon the requirements of Rule G-12 of the Municipal Securities Rulemaking Board ("MSRB"). Rule G-12 prescribes the uniform practice for, among other things, settlement of syndicate accounts. Paragraph (f) pertains to the time period in which syndicate accounts must be settled; it reads as follows:

Settlement of Syndicate or Similar-account. Final settlement of a syndicate or similar account formed for the purchase of securities shall be made within 60 days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members.

Paragraph (c)(2)(iv)(C) of the net capital rule was intended to allow inclusion only of receivables from a syndicate or account manager in those accounts subject to Rule G-12(f). Based upon the above, it is the view of the Division of Market Regulation that the phrase, "XADR"XBDeceivables due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts: refers to receivables from the syndicate or account manager and not to financial advisory fees receivables from a municipality.

If you have any questions concerning this matter, please feel free to contact the undersigned.

Sincerely,

Michael T. Dorsey

Attorney/Advisor