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Division of Market Regulation

Securities and Exchange Commission

Washington, D. C. 20549

Dear Mr. Kibler:

Enclosed herewith is a copy of the draft letter which ML proposes to submit to the Commission. Bill Crabbe and I have prepared this letter and believe that it accurately reflects your thoughts and opinions concerning Rule 15c3-3.

Please do not hesitate to make any modifications or alterations to this draft as you may see fit. If the letter does not, in fact, accurately reflect your thoughts on this subject, I would appreciate a call at your earliest convenience.

Bill and I thank you again for the help and cooperation that you and Mark have extended to ML.

Very truly yours,

Michael E. Lurie

Law Department

MERRILL LYNCH, PIERCE, FENNER & SMITH INC

ONE LIBERTY PLAZA, 165 Broadway

New York, NY 10006

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September 13, 1973

Mr. Nelson Kibler

Division of Market Regulation

Securities and Exchange Commission

Washington, D. C. 20549

Re: Rule 15c3-3

Dear Sir:

In ML's effort to comply with the provisions of Rule 15c3-3, certain questions have arisen as to the interpretation of the Rule. These questions relate to three areas:

1. stock dividend receivables;
2. cash shorts, other than sale related; and
3. proprietary accounts.

Paragraph (d)(3) of the Rule requires that a broker-dealer take prompt steps to obtain physical possession or control of securities receivable by such broker-dealer as a security dividend receivable, stock split or similar distribution for more than 45 days through a buy-in procedure or otherwise. It is Merrill Lynch's opinion that the language of (d)(3) affords a broker-dealer flexibility, and that the buy-in is not the only method to be relied upon to obtain possession or control in the aforementioned instances.

The procedure followed by ML in the area of stock dividends receivable is representative of the Firm's procedure in this area. If there is a deficiency in a particular stock due to a failure to receive a stock dividend, ML will create a dividend receivable account. Such an account may come into existence when the shares of stock received from a dividend disbursing agent are less than shares that are necessary to credit clients' accounts based on their long positions with the Firm on a given record date. This short position, in most cases, is a result of an underpayment by the dividend disbursing agent or results from claims which must be made upon other brokers based on ML holding shares of stock registered in the name of another broker on the record date. When the ML Dividend Department determines the reason for this short position, an "under" is created in the dividend receivable account and a collection effort will be initiated.

If the reason for the dividend receivable is underpayment by the dividend disbursing agent, proof will be established that ML was, in fact, holding more shares of stock than the dividend disbursing agent's records indicated. This is done in most cases by providing the dividend disbursing agent with a microfilm record of all the stock certificates held by ML and registered in the name of ML as well as a listing of these certificates in certificate number sequence. This is ML's "full box" procedure.

The dividend disbursing agent, after being presented with these facts, will acknowledge ML's claim but, pending its final review of the matter, will take additional time before making payment to ML. The entire procedure may, therefore, be in excess of forty-five days.

It should also be noted that, in its effort to safeguard the customers of the Firm, ML continually reviews the status of all dividend receivables and provides monetary reserves where, in its opinion, collection of the stock dividend will be delayed for an extended period of time or where the failure of supporting documents makes collection of the dividend receivable a doubtful proposition. Based on this reserve requirement and the aforementioned procedure, it is ML's opinion that it is in compliance with the intent and provisions of Rule 15c3-3.

As previously noted, there is another area in which the dividend receivable may arise, i.e., claims which must be made upon another broker based on ML holding shares of stock registered in the name of that broker on record date. Claims against such brokers are usually made within the 45 day period referred to in paragraph (d)(3) in accordance with the following procedure. In most instances the transfer agent will confirm to ML that the stock dividend in question has been paid to other broker. Satisfaction of this claim, however, may be subject to delay. It is ML's opinion that a buy-in in this situation is not warranted and that upon making its claim to the other broker, Rule 15c3-3 is satisfied.

A serious problem in this area arises when another broker makes a stock dividend claim against ML at a point in time approaching the 45th day after payment date of the stock dividend in question or at a date subsequent thereto. If such claim will create a deficit position in this security, ML will reconstruct its records to determine the basis for the deficit. (This is a time consuming activity.) In the overwhelming

majority of cases ML will then initiate a claim against the dividend disbursing agent or another broker. In the above situation, it is our opinion that the 45 day period referred to in paragraph (d)(3) of the Rule should not begin to run unless and until ML goes into an "under" position in this particular security by virtue of the stock dividend receivable.

ML, for internal operational convenience, has created a category of short positions entitled "cash shorts, other than sale related" (sale related cash shorts are handled pursuant to the requirements of paragraphs (m) and (n) of Rule 15c3-3). This category of short positions includes 1) internal processing errors and 2) charges made to customers' accounts in relation to dividends or splits received directly by customers and improperly retained. It is ML's opinion that, where such a cash short exists, Rule 15c3-3 does not require ML to accomplish possession or control of a fully paid or excess margin security within a specified period of time. In addition, it is ML's position that possession and control is not required to be accomplished through the buy-in procedure as prescribed by paragraph (m) of the Rule, nor are the provisions of paragraphs (d)(1), (2) and (3) and paragraph (n) applicable.

It is our opinion that the following procedure satisfies Rule 15c3-3. In all cases where there are under segregated positions (which are not covered by paragraphs (d)(1), (2) or (3) of the Rule) ML prepares, on a daily basis, a computer listing of all cash short items. The proper ML branch office will be contacted and requested to define the origin of the cash short position and what steps have been taken to alleviate this condition. If the condition cannot be resolved at the branch office level within a minimum amount of time, the item will be referred to the proper department within the Firm for special handling. Although the provisions of the Rule, as previously stated, do not provide specific time periods in which to obtain physical possession or control of these cash short positions, it is ML's procedure to effectuate a buy-in within a period of no longer than 90 days in those instances where it deems such action necessary.

"Cash shorts, other than sale related, which are not bought in are reviewed by the senior management of the Operations Division of the Firm and by the members of the Law Department to ascertain the proper method of their disposition. In most cases where the buy-in procedure is not followed, the matter will be referred to the Law Department for handling. ML believes that the aforementioned procedure

demonstrates that it is taking timely steps in good faith to accomplish physical possession or control and maintains extensive records which will enable it to sustain the burden of exhibiting the Firm's good faith in this area.

In the final area of concern, the Firm's proprietary accounts (e.g. trading accounts, error accounts), it is ML's opinion that Rule 15c3-3 has no application. This opinion is based upon the fact that such accounts are not customer accounts and, therefore, do not require the protection of the Rule.

In summary, it is ML's opinion that it is in compliance with Rule 15c3-3 in the aforementioned areas. If the Commission agrees with this position, ML would appreciate a written acknowledgement that the procedures followed by ML are, in fact, satisfying the requirements of the Rule. If the Commission is of the opinion, however, that ML's procedures do not comply with the Rule, ML hereby requests a meeting at the convenience of the Commission to discuss this important matter.

Very truly yours,

Michael E. Lurie

Law Department

NOV 30 1973

Mr. Michael Lurie

Law Department

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The Liberty Plaza

165 Broadway

New York, New York 10006

Dear Mr. Lurie:

This is in response to your letter of September 13, 1973 in which you raise certain questions regarding "Merrill Lynch's (aML)" understanding of Rule 15c3-3 under the Securities Exchange Act of 1934, particularly subparagraph (d)(3), relating to a broker-dealer's obligation to reduce stock dividends receivable, stock splits or

similar distributions to his possession or control when such possession or control is required by the rule.

Your questions relate to what procedures other than a buy-in are available to accomplish possession or control of such stock dividends, splits or similar distributions.

You state that if there is a requirement to obtain possession or control or a deficiency in a particular stock due to a failure to receive a stock dividend, ML will create a dividend receivable account. Such an account may come into existence when the shares of stock received from a dividend disbursing agent are less than the shares that are necessary to credit clients' accounts based on their long positions with ML on a given record date. This short position generally is the result of an underpayment by the dividend disbursing agent or claims to be made upon other broker-dealers based on ML's records related to holdings of shares of stock registered in the name of another broker-dealer on the record date.

You further indicate that if the reason for the dividend receivable is an underpayment by the dividend disbursing agent, proof will be established that ML was, in fact, entitled to more shares of stock than the dividend disbursing agents' records indicate. The dividend disbursing agent, after presented with the proof will acknowledge ML's claim but, pending its final review of the matter, may not issue the certificates promptly to ML. You have asked us whether acknowledgment by the agent of dividends receivable is sufficient to satisfy the requirements for possession or control of rule 15c3-3(d)(3).

The Division is of the view that in the case of claims upon dividend disbursing agents the procedures outlined above and expanded upon in your September 13, 1973 letter are sufficient to satisfy ML's obligation to take prompt steps to obtain possession or control of customers' fully paid for and excess margin securities provided that the dividend disbursing agent acknowledges that the claim is valid and does not merely acknowledge the receipt of your claim, which is still to be considered by the agent.

On the other hand, where a claim for dividends receivable is presented to another broker-dealer to whom the dividend disbursing agent may have made payment of the dividend in error, the fact that ML has asserted its claim against such broker-

dealer will not be sufficient to comply with Rule 15c3-3(d)(3) as a prompt step to obtain possession or control of such dividends. As you are aware Rule 15c3-3 contemplates that broker-dealers will improve their procedures for processing securities transactions and in our view 45 days from the payable date provides broker-dealers with adequate time to research and either pay or reject claims, where such claims have been asserted promptly after the payable date by the claiming broker-dealer.

In a related question you indicate that problems also result where another broker makes a stock dividend claim against ML at a point in time approaching the 45th day after payment date or a date subsequent thereto. You note it is ML's feeling that in sum situations the time period specified in subparagraph (d)(3) of Rule 15c3-3 does not begin to run until the broker-dealer has a deficit in those securities required for possession or control.

Rule 15c3-3 requires that a broker-dealer reduce to his possession or control and thereafter maintain possession or control of customers' fully paid for and excess margin securities. In this connection the rule requires the broker-dealer to take prompt action when there is a deficiency in those securities necessary for control, pursuant to one of the subparagraphs of paragraph (d) of the rule. It is the Division's view that a security dividend receivable as defined in subparagraph (d)(3) arises as of the payable date and not as of the date a dividend claim is asserted against ML and consequently the 45 day period required by subparagraph (d)(3) runs from the payable date. Moreover, Rule 15c3-3 prohibits a broker-dealer from delivering securities to persons other than customers if the broker-dealer has a deficiency in such security, except for same day turnarounds. Finally, if the broker-dealer has an excess of securities required for possession or control, the rule prohibits delivery of an amount greater than such excess.

You also state that ML has created, for internal operational convenience a category of short positions entitled "cash shorts other than sale related." These include: (1) internal processing errors; and (2) postings made to customers' accounts in connection with dividends and splits received directly by customers, which are owed by the customer to ML. The Division agrees that, with respect to short positions in customer accounts which arise from ML's internal processing adjustments, such short positions are not subject to the provisions of paragraph

(m) of Rule 15c3-3. With respect to short positions arising from dividends or splits received directly by customers upon which ML has a dividend claim against such customer, it is the staff's view that such short positions are sale related and paragraph (m) of Rule 15c3-3 does apply. In such circumstances the buy-in period required by paragraph (m) shall be 10 days from the payable date, unless a ten day period after settlement date would result in the buy-in being required at a later date.

Finally you ask whether the buy-in provisions of Rule 15c3-3 are applicable to certain short positions in ML's proprietary accounts. We agree that the rule is not applicable to such short positions in proprietary accounts except where paragraph (h) of Rule 15c3-3 requires the buy-in of all short security differences not resolved within the 45 day period from a Rule 17a-13 or Rule 17a-5 box count or other discovery date of such difference.

If you have any further questions, please contact us.

Sincerely,

Marc L. Berman

Acting Chief

Branch of Rules and Interpretations