

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

DEC 15 1976

Mr. Douglas F. Parrillo

Vice President

National Association of

Securities Dealers, Inc.

1735 K Street, N.W.

Washington, D.C. 20006

Dear Mr. Parrillo:

In your letter of April 14, 1976, you request the Division's views regarding the treatment pursuant to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934 of securities taken down on a best efforts basis by selling group members participating in firm commitment underwritings.

It is the view of the Division that a participant in a firm commitment underwriting must apply the appropriate percentage deduction to the participant's total commitment at the date such securities underwritten begin to trade regular way. In addition, the participant is required by subparagraph (c)(2)(viii) of Rule 15c3-1 to apply the appropriate percentage deduction to its part of the commitment for which the participant has no indication of interest from others to purchase its unsold amount, which resulting deduction shall be reduced by any unrealized profit, in an amount not greater than the deduction or increased by any unrealized loss.

With respect to securities taken down by a selling group member, it is the view of the Division that where the selling group member has an unconditional right, evidenced by a written agreement with the underwriter or participant in the underwriting, to return the unsold shares to the underwriter or participant, then the broker or dealer is not required to apply the haircuts required by subparagraph (c)(2)(viii) of Rule 15c3-1 on its participation to the date such securities begin to

trade regular way. In addition, the percentage deductions required by subparagraph (c)(2)(vi) of Rule 15c3-1 do not apply to such selling group member's participation or unsold portion when the issue trades regular way, provided that any unsold position is returned to the underwriter or to the participant in the underwriting with whom the above noted written agreement has been executed prior to or upon the date the issue settles.

If you have any further questions, please contact us.

Sincerely,

Nelson S. Kibler

Assistant Director

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST

WASHINGTON D.C. 20006

Mr. Nelson S. Kibler

Assistant Director

Division of Market Regulation

Securities and Exchange Commission

500 North Capitol Street

Washington, D.C. 20549

Dear Mr. Kibler:

April 14, 1976

On April 7, 1976, Ted Prush and I of this office discussed with you and members of your staff a recent interpretation concerning the treatment given under the net

capital rule to securities taken down on a best efforts basis by selling group members participating in firm commitment underwritings.

At this meeting, we advised that this is a matter of considerable interest to the Association's Board of Governors and both its Committee on Capital Standards and its Advisory Council, the latter of which is composed of the District Chairman of each of the 13 District Committees of the Association.

As we explained during our meeting, the Association is concerned with what appears to be an unpublished interpretation which would require a selling group member, whose selling group agreement permits securities taken down to be returned to the underwriter as unsold, to take a haircut on the full amount of his participation even though there is no capital exposure or inventory risk involved. As a practical matter, the haircut is already taken by the underwriter and the selling group member's position really amounts to nothing more than a "firm" offering by an underwriter to a selling group member.

The Association believes that if no relief is granted by the Commission in this area, many smaller broker-dealers who normally participate as selling group members will be totally removed from the underwriting business.

From these discussions, it is our understanding that the staff is generally sympathetic to this problem and would have no objection to a selling group member not taking a haircut on the full amount of its participations provided that the selling group agreement or some other written notice or document included language to the effect that the selling group member has an unrestricted right to return unsold shares to the underwriter or a member of the underwriting syndicate.

We appreciate your very kind offer to provide a written interpretation on this subject and, in view of the importance of this matter, we hereby request such.

Sincerely,

Douglas F. Parrillo

Vice President

Department of Regulatory Policy and Procedures