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In this connection, the Division of Market Regulation sent the following letter to the National Association of Securities Dealers establishing guidelines for applications for control locations to be utilized for the purposes of accommodation transfers. These criteria are intended only to be guidelines and specific factual patterns may require deviation therefrom.

July 15, 1974

Mr. Douglas F. Parrillo
Director - Regulatory Policy
and Procedures
National Association of
Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Parrillo:

In your letter of August 20, 1973, you indicate that the Association has received numerous inquiries from its membership concerning the effect upon a firm's net capital where advance payments are made for securities which the firm is failing to receive. You state that these situations frequently arise as a result of the practice by small broker-dealers of prepaying fail-to-receive contracts to facilitate the transfer process. You indicate that you understand that the Commission would consider a prepayment by a broker-dealer on a fail-to-receive created by a customer transaction as a contingent liability includable in aggregate indebtedness pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934.

With respect to the application of the provisions of Rule 15c3-1 to such transactions, it is our view that such items should not be considered contingent liabilities but rather unsecured short positions which should be deducted by a broker-dealer pursuant to a computation under Rule 15c3-1. We recognize that the transfer service provided is useful and desirable to smaller broker-dealers not located in the major financial centers and that the practice ultimately benefits the customers of these firms. Therefore, we would recommend that no action be taken if a broker-dealer does not deduct such items as an unsecured short position pursuant to a computation of its net capital under Rule 15c3-1, where such items conform to the criteria set forth below.

For the purposes set forth above, a broker-dealer sho wishes to utilize the facilities of another broker-dealer for accommodation transfers shall obtain a statement from the broker-dealer effecting such transfers which shall provide that accommodation transfers shall be carried by the carrying broker-dealer in an account designated as a "Special Custody Account for Accommodation Transfers for the Exclusive Benefit of Customers of (name of purchasing broker-dealer)" (the "Account"). The Account shall contain only the securities of customers of that particular broker-dealer in transfer, or pending transfer. The broker or dealer carrying the Account shall not effect security transactions through such Account, its purpose being exclusively for carrying securities being transferred for a customer of the purchasing broker-dealer. The broker-dealer carrying the Account shall agree that securities carried in such Account shall be free of any charge, lien, or claim of any kind in favor of such carrying broker-dealer. Additionally, the carrying broker-dealer shall undertake to comply fully with all aspects of Rule 15c3-3 with respect to the Account.

Finally, it is our view that the term customer set forth in subparagraph (a) (1) of Rule 15c3-3 shall be deemed to include a broker-dealer to the extent that such broker-dealer maintains with another broker-dealer an account designated "Special Custody Account for Accommodation Transfers for the Exclusive Benefit of Customers of (name of purchasing broker-dealer)", which meets the criteria set forth above and if such criteria were complied with by the carrying broker-dealer, the Division would consider recommending to the Commission that such accounts be treated as control locations for purposes of Rule 15c3-3(c)(7) upon an appropriate application to the Commission by the carrying broker-dealer.

Sincerely,
Nelson S. Kibler
Assistant Director
Broker-Dealer Financial Responsibility
and Securities Transactions

Statutory Basis

The Commission acting pursuant to Sections 15(c)(3) and 23(a) of the Securities Exchange Act of 1934, Section 8(c)(2)(C)(iii) of the Securities Investor Protection Act of 1970 and Section 1 of Public Law 87-592 hereby amends Section 200.30-3 of Chapter II of Title 17 of the Code of Federal Regulations by adding a new subparagraph (11) to paragraph (a) thereunder, effective immediately.