SEC Letter to NASD, July 24, 1984
Rule 15c3-1(c)(1)/11
Rule 15c3-1(c)(2)(iv)(C)/09

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

July 24, 1984

Concessions Receivable means Concessions or Commissions Payable.

Thomas R. Cassella
Director
Financial Responsibility
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Cassella:

We have received many inquiries concerning the treatment of certain concessions receivable and related commissions payable under the net capital rule (17 CFR 240.15c-1 (c)(2)(iv)(C)). In various letters (the essence of which is contained in NASD Information Memorandum 81-12), the Division has taken the position that concessions receivable generally must be deducted from net worth in computing net capital. However, the Division in those letters stated that it would not recommend any action if concessions receivable were not deducted from net worth to the extent they are offset by related commissions or concessions payable to sales representatives or unaffiliated selling group members provided that:

(a) a written contract exists between the broker/dealer and sales representative or unaffiliated selling group member, whereby the sales representative or unaffiliated selling group member waives payment of the commission or the concession until the broker/dealer is in receipt of the concessions;

(b) an opinion of counsel is obtained which states that such contract is enforceable in the state in which the broker/dealer and sales representative or unaffiliated selling group member reside;

(c) the broker/dealer's liability for the commission or concession payable is limited solely to the proceeds of the concessions receivable; and

(d) the entire amount of the commission or concession payable is included in aggregate indebtedness at the time of accrual.

The Division has reconsidered these provisions and believes modifications are appropriate. These modifications are described below.

With respect to the requirement of an opinion of counsel, the Division believed in the past that there was some question as to whether a contract that obligates the broker-dealer to pay a commission to a sales representative only upon the broker/dealer's receipt of the concessions may be void or voidable under various state laws. From the date of the NASD Information Memorandum, counsel's opinions have been rendered on the validity of these agreements under the laws of most if not all states. To our knowledge no agreement has been found invalid because of the applicable state laws. Thus, under the circumstances, the Division believes that opinion of counsel should not generally be necessary. Rather, each appropriate self-regulatory organization may now impose the requirement in those states where it deems necessary.

With respect to aggregate indebtedness, the Division, based on its experience, believes that the inclusion of the entire liability for commissions payable may unnecessarily restrict the ability of some broker-dealers to expand their businesses, particularly since commissions payable many years after the net capital computation are currently included in aggregate indebtedness. Under the circumstances, the Division will not recommend any action if a broker-dealer includes in aggregate indebtedness only that portion of the liability which is payable within twelve months from the net capital computation date and in addition has net capital equal to one percent of the remaining amount of the concession or commissions payable.

Please note that while provisions (b) and (d) listed above have been modified, the requirements with respect to the written contract and the limitation of the liability to proceeds of the concessions receivable remain intact.

Sincerely,

Michael A. Macchiaroli

Michael A. Macchiaroli
Assistant Director

cc: Martin Hobby
New York Stock Exchange