

National Association of Securities Dealers, Inc. 1735 K. Street Northwest
Washington D.C. 20006 June 14, 1978

Mr. Nelson Kibler

Assistant Director Division of Market

Regulation Securities and Exchange Commission
500 North Capitol Street Washington, D.C. 20549

Dear Nelson:

From a review of recent Interpretative and No-Action Letters issued by your Division, we noted the content of the letter sent to Boland, Saffin, Gordon & Sautter ("Boland"). A copy of the Boland letter and Gary Miller's reply thereto are enclosed as Attachment 1. The letter states that securities in the proprietary accounts of a broker-dealer must be held in bearer, nominee, or firm name and not in the name of an individual partner of the firm if they are to be given value in a firm's net capital computation.

On August 24, 1977, Brad Patterson of the NASD wrote to your Division concerning this same situation. On September 28, 1977, Brad received an answer to that letter from Phil Houston. Phil's response stated that while the Division did not consider the use of a natural person nominee to be appropriate, the market value of such securities could be included in a firm's net capital computation until such securities ceased to be freely transferable.

We believe there is a significant difference between the letter sent to Boland and Phil's reply to Brad. We would be grateful for your comments on this.

Sincerely,

John J. Cox

Assistant Director Department of Regulatory Policy and Procedures

June 28, 1978

John J. Cox

Assistant Director Department of Regulatory Policy and Procedures

National Association of Securities Dealers, Inc.

1735 K Street, N.W. Washington, D.C. 20006

Dear John:

With your letter of June 14, 1978 you sent me copies of two letters from our Office which you believe are inconsistent. You ask for our comments.

In a letter dated November 11, 1977, Gary Miller wrote that securities in the capital account of a broker or dealer must be owned by the firm ... and accordingly must be held in bearer, nominee or firm name and not in the names of the individual partners of the firm in order to have such securities included in net worth for net capital purposes.

In a letter dated September 28, 1977, Phil Huston wrote that the use of a natural person nominee was not appropriate because of the potential obstacles to transferability of firm or customer securities in the event of a probate, divorce or other legal proceeding involving such person.

That sentence was in accord with what Gary Miller had said in his letter. Phil went on to say that If proprietary securities so registered should at any time cease to be freely transferable, they would be accorded no value pursuant to paragraph (c)(2)(vii) of Rule 15c3-1 under the Securities Exchange Act of 1934.

You read that last sentence to mean that the market value of such securities could be included in a firm's net capital computation until such securities cease to be freely transferable.

While I can certainly understand how you may have misunderstood Phil's letter, I do not read his letter as inconsistent with Gary's letter. The last sentence was merely explanatory of the position expressed in the prior sentence in the letter. Thus, Phil's letter should be read to mean that the Division does not regard the use of a natural person nominee to be proper because a legal proceeding might

prevent the securities from being freely tradable and therefore valueless for net capital purposes.

Thank you for bringing this to my attention. I hope I have adequately answered your questions.

Sincerely,

Nelson S. Kibler

Assistant Director