

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

June 8, 1973

The Commission today released the attached Division of Market Regulation letter to the National Association of Securities Dealers respecting the Division's interpretation of the net capital treatment to be given to securities position, transactions and obligations in suspended securities.

Mr. Frank J. Wilson,

Senior Vice President, National Association of Securities Dealers, Inc., 1735 K Street NW., Washington, D.C. 20006.

Dear Mr. Wilson:

Recently a number of questions have been raised regarding the net capital treatment which should be given to firm and customer obligations with respect to securities positions and securities transactions during a period in which trading in a particular security has been suspended by order of the Commission pursuant to Section 15(c)(6) or Section 19(a)(4) of the Securities Exchange Act of 1934.

The purpose of the net capital rule is to require a broker or dealer to have at all time sufficient liquid assets to cover its current indebtedness. The need for liquidity has long been recognized as vital to the public interest and for the protection of investors and is predicated on the belief that accounts are not opened and maintained with broker-dealers in anticipation of relying upon suit, judgment and execution to collect claims but rather that on reasonable demand one can liquidate his cash or securities positions. With this background the Division is of the view that for purposes of the net capital rule securities positions and securities transactions in which trading has been suspended should be treated as follows:

1. Long Proprietary Positions

Where the broker-dealer is long in a proprietary account, whether a firm trading account or investment account, a partners account subject to an equity agreement pursuant to subparagraph (c)(4) of Rule 15c3-1, or securities which have been contributed as subordinated capital pursuant to subparagraph (c)(7) of Rule 15c3-1

and where such securities have been suspended by order of the Commission such positions should be treated as assets not readily convertible into cash which should be deducted in computing "net capital" for purposes of Rule 15c3-1 under the Securities Exchange Act of 1934.

2. Short Proprietary Positions

Where the broker-dealer is short a suspended security in a proprietary account, the broker-dealer shall value the position at the last sale price prior to the suspension and shall reduce net capital by the appropriate haircut on the presumed market value of the position. The Division does not believe it would be appropriate to value such short positions at zero as it may prove impossible to cover the short position at that price when the suspension is lifted.

3. Fails to Receive and Uncompleted Customers' Sales Transactions

When the broker-dealer is failing to receive the security which has been suspended from another broker-dealer or where a customer has sold the securities prior to the suspension and has not yet made delivery to the broker-dealer, the related contract liability either to another broker-dealer or to the customer shall be included in computing aggregate indebtedness, except where such liability would be excluded under subparagraph (c)(1)(D) of Rule 15c3-1.

4. Fails to Deliver

Absent a tender of delivery of the suspended securities to a purchasing broker-dealer there can be no assurance that the fail to deliver is collectible by the broker-dealer having an obligation to deliver. In numerous instances the broker will be unable to make such tender since he may not have possession of the securities needed to make delivery and he will be unable to determine the collectability of that receivable. The Division is therefore of the view that such fails to deliver should be treated as assets not readily convertible into cash and deducted in computing net capital until they are collected or the suspension is lifted.

5. Customers' Special Cash Accounts Under Section 4(c) of Regulation T

When a customer purchases securities in a Special Cash Account Under Section 4(c) of Regulation T he undertakes to make payment within seven business days after

the purchase. If payment is not made by the seventh business day and an extension is not obtained through a committee of a national securities exchange, the broker must cancel or otherwise liquidate the unsettled portion thereof. Since the customer generally has an obligation to make full cash payment within seven business days it is appropriate for customer accounts which are long the suspended security to be treated as fully secured and collectible until the seventh business day following the purchase, however, if payment is not so received the customer's account must be considered unsecured and the full amount of the unsettled portion of the purchase price must be deducted in computing the broker-dealer's net capital unless the broker-dealer is otherwise secured. With respect to transactions which are normally consummated on a C.O.D. basis payment may be delayed no longer than 10 business days after settlement date and if payment is delayed beyond that date the receivable should be deemed unsecured and deducted in computing net capital.

6. Transactions In a General Account Under Section 3(a) of Regulation T

(a) Where a customer is long in a general account a security which has been suspended and where such suspension results in the security receiving no loan value and if as a result the customer's account becomes partially secured or unsecured, the deficiency shall be deducted in computing net capital.

(b) Where the customer is short in a margin account a security which has been suspended for purposes of the net capital rule the ledger credit balance continues to be included in aggregate indebtedness.

We hope this letter clarifies the treatment of positions and obligations of broker-dealers in suspended securities. If we may be of any further assistance, please do not hesitate to contact us.

Sincerely,

Lee A. Pickard Director