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DIVISION OF
MARKET REGULATION

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 1 1979

John Cox, Esq.
National Association of
Securities Dealers, Inc.
1735 K Street
Washington, D.C. 20006

Dear John:

Your letter dated March 20, 1979 and that of Bradford M. Patterson dated November 2, 1977, ask about the application of subparagraph (c)(1)(iii) of Rule 15c3-1 as it relates to a firm which is a distributor and principal underwriter of a mutual fund.

The letter of Mr. Patterson states the facts as follows: The distributor sells shares of the fund to broker-dealers who have sales agreements with the firm and debits a (dealers) account receivable the amount of the purchase. The amount is net of concessions retained by the purchasing broker-dealer. A corresponding credit is recorded to reflect its liability to the fund. Any difference represents the distributor's gross profit.

You argue that subparagraph (c)(1)(iii) of Rule 15c3-1 (17 CFR 240.15c3-1(c)(1)(iii)) provides that fails-to-receive offset by fails-to-deliver of the same issue and quantity may be excluded from aggregate indebtedness. However, a mutual fund distributor in the analogous situation would not record fails but rather a broker/dealer receivable and a payable to the fund.

It is the opinion of the Division of Market Regulation that the amounts payable to the mutual fund must be included in aggregate indebtedness.

Sincerely,

Mike

Michael A. Macchiaroli
Branch Chief

NASD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

1735 K STREET NORTHWEST • WASHINGTON D.C. 20006

March 20, 1979

Mr. Robert L. Smith
Securities Operations Specialist
Securities and Exchange Commission
Division of Market Regulation
500 North Capitol Street
Washington, D.C. 20549

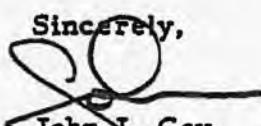
Dear Bob:

As you requested in a telephone conversation with James McGinnis on March 6, 1979, I am writing to call the Division's attention to a question originally raised by Bradford M. Patterson in a letter dated November 2, 1977 (copy attached).

Subparagraph (c)(1)(iii) of Rule 15c3-1 provides that fails-to-receive offset by fails-to-deliver of the same issue and quantity may be excluded from aggregate indebtedness. However, a mutual fund distributor in the analogous situation would not record fails but rather a broker/dealer receivable and a payable to the fund. We would like to know if the Division of Market Regulation is of the opinion that such payables may be properly excluded from the distributor's computation of aggregate indebtedness.

If you have any further questions on this matter, please call James McGinnis or myself at 833-7356 or 833-7320, respectively.

Sincerely,


John J. Cox

Assistant Director
Department of Regulatory
Policy and Procedures

JJC:dsw

Enclosure

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Mr. Robert L. Smith
Securities Operation Specialist
Securities and Exchange Commission
Division of Market Regulation
500 North Capitol Street
Washington, DC 20549

Dear Bob:

On August 12, 1977, I discussed with you a letter that I received concerning the application of subparagraph (c)(1)(iii) of Rule 15c3-1 and how it relates to a distributor and principal underwriter of a mutual fund.

The firm sells shares of the fund to broker-dealers who have sales agreements with the firm and debits an account receivable (dealers) the amount of the purchase. The amount is net of concessions retained by the broker-dealer. A corresponding credit is recorded to reflect its liability to the fund. Any difference represents the distributor's gross profit.

In our discussion, it was agreed that although the receivables and related liabilities were not considered fails to deliver and fails to receive, they were analogous to fails and therefore, the liabilities may be excluded from aggregate indebtedness.

The same question has come to us from another broker-dealer, therefore, would you be kind enough to advise us whether you still view this as an appropriate application of the Rule.

Very truly yours,

Bradford M. Patterson
Surveillance Department

bc: John Cox