



DIVISION OF  
MARKET REGULATION

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

June 11, 1987

Michael J. Simon  
Vice President - Associate General  
Counsel  
National Securities Clearing  
Corporation  
55 Water Street  
New York, New York 10041

Dear Mr. Simon:

This responds to your letter of March 23, 1987 wherein the National Securities Clearing Corporation ("NSCC") requests a no-action position from the Division of Market Regulation regarding the net capital treatment of its proposed Reconfirmation and Pricing Service ("RECAPS"). In particular, NSCC requests that the Division not recommend enforcement action to the Commission if NSCC's members treat fails that have been reconfirmed and repriced through RECAPS as unaged fails for purposes of the Net Capital Rule (17 CFR 240.15c3-1) under Securities Exchange Act of 1934.

I understand the pertinent facts to be as follows: NSCC is developing a system to reconfirm and reprice aged fails between its members in selected securities. This system, RECAPS, is currently scheduled for a single operation on a pilot basis using fails in municipal securities that are at least 15 business days old. The pilot will have no more than 50 participants, all members of NSCC. It will also update the fails by reconfirming and repricing them as more fully described in your letter and as represented hereinafter.

Participants in the RECAPS system will put trade data into NSCC on a Friday evening; the data will be the same as the standard "As-of" submissions, except that the original settlement date will be substituted for trade date. On the following day, Saturday, NSCC will reproduce contract sheets for members informing them of compared and uncompared trades. The normal trade resolution processes will occur on Saturday as well.

On Sunday, a second set of contracts sheets will be produced showing newly compared trades. Also on Sunday, receive and deliver instructions will be issued to participants for all

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reconfirmed trades with settlement schedules for the following day, Monday. On the receive and deliver report that will accompany the instructions, NSCC will inform members of the difference between the original contract price of a trade and the current market price.

The value of the difference between the original contract price and the current market value of all RECAPS instructions will be netted to a single dollar amount; this amount, the RECAPS cash adjustment, will be automatically included in Monday's cash settlement with NSCC. Accordingly, as of Monday, the parties to the trade will hold receive and deliver instructions priced at the current market and the difference between the original contract price and the current market price will have been paid between the parties.

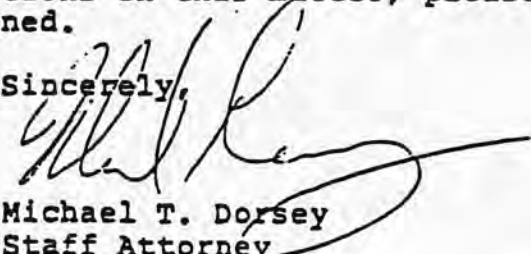
(iv) The net capital rule imposes on broker-dealers certain deductions from net worth for "aged" fails to deliver or "aged" fails to receive, outstanding for more than prescribed periods of time. In the case of municipal securities an aged fail exists 21 business days after settlement date for fails to deliver 1/ and 30 calendar days for fails to receive. 2/

Based upon your foregoing representations regarding RECAPS, the Division will raise no question nor recommend any enforcement action if a broker-dealer participating in NSCC's RECAPS pilot service treats the RECAPS' settlement date (Monday) as the date of the fail to deliver or the fail to receive under paragraph (c)(2)(~~iii~~) and (c)(2)(iv)(E) of the Commission's net capital rule. For purposes of future computations under these provisions, the contract value of each fail should be the RECAPS' price of the contract rather than the original price of the trade.

You should understand this position is that of the staff on enforcement only and does not purport to be a legal conclusion on this matter. The Division's position is necessarily confined to the facts as you have represented them to us; any material change may warrant a different result and should be brought to the attention of the Division.

If you have any further questions on this matter, please feel free to contact the undersigned.

Sincerely,

  
Michael T. Dorsey  
Staff Attorney

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1/ 17 CFR §240.15c3-1(c)(2)(ix).

2/ 17 CFR §240.15c3-1(c)(2)(iv)(E).