



DIVISION OF  
MARKET REGULATION

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

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Edward Kwalwasser  
Senior Vice President  
New York Stock Exchange, Inc.  
11 Wall Street  
New York, New York 10005

Thomas Cassella  
Vice President  
National Association of  
Securities Dealers, Inc.  
1735 K Street, N.W.  
Washington, D.C. 20006

Dear Messrs. Kwalwasser and Cassella:

We have been asked by broker-dealers on numerous occasions to designate as control locations under subparagraph (c)(7) of Rule 15c3-3 so-called "omnibus accounts" used in the transfer of customer accounts from one clearing broker-dealer to another clearing broker-dealer in two separate kinds of transactions.

First, an omnibus account is used when an introducing broker-dealer desires to change the broker-dealer through which it clears its customer transactions. In such a situation, the new clearing broker-dealer ("receiving broker-dealer") will set up an omnibus account with the previous clearing broker-dealer ("delivering broker-dealer") when it assumes the customers' accounts. The omnibus account reflects the securities due from the previous clearing broker-dealer and serves as the short side of the customers' long positions. An omnibus account is also used to facilitate the transfer of customer accounts where one broker-dealer ("receiving broker-dealer") is purchasing another broker-dealer or is taking on the accounts of a branch of another broker-dealer ("delivering broker-dealer").

The Commission's customer protection rule, Rule 15c3-3 (17 C.F.R. §240.15c3-3), requires a broker-dealer promptly to obtain and thereafter maintain the physical possession or "control" of all fully-paid securities and excess margin securities carried by it for the account of customers. The term "control" is defined by paragraph (c) of Rule 15c3-3. Since securities owed to the receiving broker-dealer in those situations described above are not deemed by the rule to be in its control, the receiving broker-dealer will apply, pursuant to subparagraph (c)(7) of the rule, to the Commission to have the omnibus account designated as a control location.

Only under certain specific circumstances will the Division, through authority delegated to it by the Commission, designate an omnibus account as a control location. Generally, the Division will designate an omnibus account as a control location for purposes of Rule 15c3-3 under the following circumstances:

- (1) the books and records of the receiving broker-dealer reflect the customer securities positions and money balances previously held by the delivering broker-dealer;
- (2) the books and records of the receiving broker-dealer reflect that the customer securities not yet transferred to it are "located" in the omnibus account at the delivering broker-dealer;
- (3) the receiving broker-dealer assumes the responsibility to clear all transactions in the customer accounts being transferred;
- (4) the delivering broker-dealer provides the receiving broker-dealer with written assurance that: (i) for purposes of Rule 15c3-3, it will treat the omnibus account as a customer account and the customer securities maintained in the omnibus account as fully-paid securities; and (ii) it will promptly deliver the securities to the receiving broker-dealer; and
- (5) the receiving broker-dealer makes written application to the Commission to have the omnibus account designated as a control location and represents in the application that each of the above listed requirements will be complied with.

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An omnibus account that is designated as a control location usually will retain such designation only for a period of thirty business days from the date it is entered on the receiving broker-dealer's books and records. At the expiration of thirty business days, the omnibus account loses its status as a control location, and any customer securities which have not been delivered to the receiving broker-dealer will no longer be deemed to be within the receiving broker-dealer's possession or control. When the omnibus account ceases to be a control location, the receiving broker-dealer must include the market value of all customer securities not yet delivered to it in its reserve formula computation (17 C.F.R. §240.15c3-3a) as a "failed to receive" credit item, whether or not it has any money credits related to the particular securities and must initiate action to buy-in the securities not yet delivered.

It should be noted that the above requirements for having an omnibus account designated as a control location are applicable only to the securities which the receiving broker-dealer desires to treat as being in its control by use of the omnibus account. For all other securities, the broker-dealer will have to take other appropriate action to comply with the possession or control requirement of Rule 15c3-3.

We ask that you call this matter to the attention of your respective member organizations.

Sincerely,

*Michael A. Macchiaroli*

Michael A. Macchiaroli  
Assistant Director