SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

May 5, 1981

Mr. Robert M. Bishop
Senior Vice-President
New York Stock Exchange, Inc.
55 Water Street
New York, New York 10004

Dear Mr. Bishop:

As you know, Item two of the Formula for Determination of Reserve Requirement for Brokers and Dealers under Rule 15c3-3 (17 CFR 240.15c3-3) adopted pursuant to the Securities Exchange Act of 1934 includes "[m]onies borrowed collateralized by securities carried for the account of customers." That item was interpreted by the Division shortly after the adoption of Rule 15c3-3 as follows:

> The market value of securities lodged in firm bank loan for which the broker or dealer does not have a corresponding proprietary long position shall be included as a credit in Item-two of the formula. *
>
> Securities Exchange Act Release No. 9922 (January 2, 1973) p. 4.

That interpretation created a presumption that all securities in firm bank loan for which the broker or dealer did not have a corresponding proprietary long position were customer securities. It appears, however, that in some cases, securities in firm bank loan allocate to the accounts of partners or officers of the broker or dealer, who are not included within the definition of "customer" in Rule 15c3-3. Hence inclusion of their securities in the interpretation seems inappropriate.

Accordingly, the Division of Market Regulation has amended the interpretation quoted above as follows:

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* See also the discussion in the Release as to the term "customer".

> "The market value of securities lodged in firm bank loan for which the broker or dealer does not have a corresponding proprietary long position and which do not allocate to the account of a partner, a director or officer of the broker or dealer who is not a customer under paragraph (a)(1) of Rule 15c3-3 (17 CFR 240.15c3-3) shall be included as a credit in Item two of the formula."

As part of the Commission's review of its financial responsibility rules relating to broker-dealers, comments were received suggesting that the substance of the above interpretation be extended to situations where the securities of another broker-dealer are commingled temporarily in a bank loan with firm securities. While we understand that such commingling may occur through operational error, and is corrected promptly in most cases, it is nonetheless a violation of the Commission's hypothecation rules for the duration of any commingling.

Before this issue can be resolved we need to clarify conflicting definitions currently in Rules 8c-1 and 15c2-1 and Rule 15c3-3 applicable to this situation. We believe that this conflict should be resolved first in order to address this proposal properly. We will respond to this point in the course of our general financial responsibility review.

Sincerely,

Douglas Scarff
Director