



DIVISION OF  
MARKET REGULATION

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

November 18, 1983

Mr. David Marcus  
Vice President  
Regulatory Services Division  
New York Stock Exchange, Inc.  
55 Water Street  
New York, New York

Dear Mr. Marcus:

The Division of Market Regulation has on numerous occasions been asked at what point a haircut must be taken with respect to firm commitment underwritings of securities registered with the Commission under Securities Exchange Act Rule 15c3-1 (17 CFR §240.15c3-1) and, when and to what extent that haircut may in turn be reduced during the underwriting process. This letter is intended to answer these questions.

We understand that generally, in a firm commitment underwriting, the so-called underwriter's agreement, in which the underwriter agrees to purchase the securities from the issuer, provides that the underwriter's obligation is contingent upon the effectiveness of the registration statement. When the registration statement becomes effective, each member of the underwriting syndicate becomes legally obligated to purchase from the issuer the securities as specified in the underwriting agreement. It is at this point that each member of the underwriting group must make the deduction to net worth in computing its net capital required by subparagraph (c)(2)(viii) of Rule 15c3-1.

As you well know, it is customary for members of the underwriting syndicate to engage in efforts to obtain so-called "indications of interest" in an issue from broker-dealers and from the general public prior to the effective date of the registration statement. However, the Securities Act prohibits the making of a contract for sale until such time as the registration statement has become effective. Accordingly, the offer of the prospective purchaser is only that, until accepted after the effective date of the registration statement. Typically, the acceptance is manifested by the mailing of a confirmation to the purchaser. Only after the contract to purchase is in fact entered into may the underwriter reduce the amount of his commitment to the extent of the purchase. Notwithstanding the implications of any outstanding interpretative letters to

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the contrary, the underwriter may not reduce his commitment as a result of having obtained mere "indications of interest."

I hope the above will resolve any uncertainty regarding these matters.

Sincerely,



Michael A. Macchiaroli  
Assistant Director

cc: Thomas Cassella  
National Association of  
Securities Dealers, Inc.