May 7, 1979

Mr. Gerald Marcus

Oppenheim, Appel, Dixon & Co.

One New York Plaza New York, New York 10004

Dear Mr. Marcus:

In your letter dated June 6, 1977, you point out that Securities Exchange Act Release 13565 (May 23, 1977) addresses itself to net capital charges on account of deficits in fails to receive outstanding more than 30 calendar days and deficits in stock loan. You ask whether the deficits should be calculated (1) in the aggregate; (2) on a contract by contract basis; or (3) on a broker by broker basis.

The provisions of the net capital rule (17 CFR 240.15c1-1) to which you refer are paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(E) of Rule 15c1-1. The first provides that the market value of stock loaned in excess of the value of any collateral received therefore must be deducted from net worth in computing net capital. The latter provides that the amount by which the market value of securities failed to receive outstanding more than 30 calendar days exceeds the contract value of such fails to receive must be deducted from net worth in computing net capital.

The Division of Market Regulation is of the view that in the case of fails to receive outstanding more than 30 calendar days, the deficit should be calculated on a contract by contract basis. In the case of stock loans, if the deficit is calculated on a broker by broker basis, the Division of Market Regulation will recommend no action to the Commission.

Sincerely,

Michael A. Macchiaroli

Branch Chief

June 6, 1977

Mr. Nelson Kibler

Securities & Exchange Commission

500 North Capital Street Washington, D.C. 20549

Dear Nelson:

Release #-34-13565 dated May 23, 1977 which amended 15c3-1 and 15c3-3 and becomes effective July 15, 1977 addresses itself, among many other things, to net capital charges on account of deficits in fails to receive outstanding more than 30 calendar days and deficits in stock loan. However, the rule is silent as to whether the deficit should be calculated 1) in the aggregate 2) on a contract by contract basis or 3) on a broker by broker basis.

Since the intent of the rule is to limit the exposure and risk of the broker-dealer, it is recognized that to calculate the charge in the aggregate would defy that intent. The second alternative, of course, is the most conservative approach but, is not necessarily the most reasonable or practical method. The third alternative would be to match the market value to the ledger balance on a broker by broker basis. Since most broker-dealers maintain their stock loan positions in this manner and the related exposure in computing it this way would fairly represent the exposure and risk, it is requested that the Commission allow this method as an acceptable way to calculate such deficit conditions in both stock loan and fail to receive positions.

In our recent telephone conversation you indicated that you didn't envision any problem in accepting this position and that if I wrote you putting forth the problem you would confirm in writing the Commission's acceptance. Your kind attention to this matter would be greatly appreciated.

Sincerely,

Gerald Marcus