



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

DIVISION OF  
MARKET REGULATION

January 4, 1990

Ms. Marianna Maffucci  
Vice President and Assistant  
General Counsel  
Public Securities Association  
40 Broad Street  
New York, New York 10004-2373

Dear Ms. Maffucci:

This letter is in response to your letter dated August 8, 1989, in which you request on behalf of the Public Securities Association that the Division of Market Regulation ("Division") issue a no-action letter that will permit broker-dealers to consider the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA") as control locations for purposes of paragraph (b)(4) of Securities Exchange Act Rule 15c3-3 (17 C.F.R. §240.15c3-3).

You state that it is your understanding that occasionally broker-dealers will exchange their proprietary FHLMC or FNMA securities for newly issued FHLMC or FNMA REMICs or other derivative securities that are backed by the securities exchanged by the broker-dealers. Because FHLMC and FNMA must ensure that they have received the correct securities and that the securities have the required average coupon and average maturity, broker-dealers will generally deliver their securities to FHLMC or FNMA up to five days in advance of the issuance of the new derivative securities. Upon receipt of a broker-dealer's securities, both FHLMC and FNMA: (1) mark their books and records to indicate that each broker-dealer's securities are being held for the exclusive benefit of that broker-dealer; (2) segregate on their books and records the securities being held for the broker-dealer from the securities that they own; and (3) issue receipts to the delivering broker-dealer stating that securities of a specific current unpaid amount or an original face amount comprising certain pool numbers and coupon interest rates are being held by FHLMC or FNMA until the exchange date. Furthermore, you state that at all times prior to the exchange, the specified securities will remain the separate property of the broker-dealer with the appropriate indications being made on FHLMC's and FNMA's books and records and will be held free and clear of any right, charge, security interest, lien, or claim of any kind.

You also state that broker-dealers want to enter into repurchase agreements ("repos") using the securities they have



delivered to FHLMC or FNMA as the subjects of the repos. Among other things, paragraph (b)(4)(i) of Rule 15c3-3 requires a broker-dealer that retains custody of securities that are the subject of a repo between itself and a counterparty ("hold-in-custody repo") to maintain possession or control of those securities. Pursuant to paragraph (b)(4)(ii), securities that are not within a broker-dealer's physical possession will be deemed for purposes of paragraph (b)(4) to be in the broker-dealer's control only if the securities are in one of the "control locations" set forth in paragraphs (c)(1), (c)(3), (c)(5), or (c)(6) of the rule.

Since a broker-dealer that has delivered securities to FHLMC or FNMA is not in physical possession of the securities and since neither FHLMC nor FNMA falls within the description of any of the control locations set forth in paragraphs (c)(1), (c)(3), (c)(5), or (c)(6), a broker-dealer is prohibited from using the delivered securities as the subject of a hold-in-custody repo. However, based on the circumstances described above, the Division will not recommend any action if broker-dealers consider FHLMC and FNMA as control locations for purposes of paragraph (b)(4) of Rule 15c3-3. This no-action position is based on the representations set forth above. Any material change could warrant a different position and, therefore, should be brought to the Division's attention.

Please do not hesitate to contact me or my staff if you have questions concerning the above.

Sincerely,

*Michael A. Macchiaroli*  
Michael A. Macchiaroli  
Assistant Director

cc: Salvatore Pallante  
New York Stock Exchange, Inc.

Thomas R. Cassella  
National Association of Securities  
Dealers, Inc.