



DIVISION OF
MARKET REGULATION

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

June 16, 1988

Roberta S. Karmel, Esq.
Kelley Drye & Warren
101 Park Avenue
New York, New York 10178

Dear Ms. Karmel:

This letter is in response to your letter dated April 29, 1988, in which you request, on behalf of the Securities Industry Association (the "SIA"), a no action position regarding "buy-in" requirements for foreign issued, foreign settled securities pursuant to paragraph (d) and paragraph (m) of Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

We understand the pertinent facts which prompted your request to be as follows: Subparagraph (d)(2) of Rule 15c3-3 provides that if securities are carried on a broker-dealer's

"books or records as failed to receive for more than thirty calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain physical possession or control of securities so failed to receive through a buy-in procedure or otherwise."

Rule 15c3-3(m) provides that a broker-dealer which executes a long sell order for a customer and has not obtained possession of the securities from the customer within ten business days after settlement date "shall immediately thereafter close the transaction with the customer by purchasing securities of like kind or quantity...."

Settlement periods and procedures vary throughout the international securities market. Some countries have similar or more rapid automated securities settlement systems than those in the United States; other countries have settlement procedures which are substantially slower than those in the U.S. Some countries employ manual securities settlement procedures (e.g., physical delivery of certificates and multiple clearing agents), which are relatively inefficient and result in high fail rates. Settlement delays, in many cases beyond sixty days, are prevalent due to limitations of some foreign settlement systems.

Buy-ins, even after sixty days, frequently result in new fails. There is often a "snowball" effect - a fail results in a buy-in, which results in an additional fail. Frequently, the application of the buy-in rules to foreign transactions in foreign securities does not effectively encourage the settlement of foreign trades because of systemic faults in the settlement procedures of foreign countries.

In light of the above facts, you propose the following alternative procedures, in lieu of paragraphs (d) and (m) of Rule 15c3-3, to encourage the settlement of foreign trades in foreign securities:

1. Thirty days after settlement date, the broker-dealer will take a proprietary haircut charge for the securities failed to receive or those due from a customer, pursuant to Rule 15c3-1, reduced (or increased) by the equity (or deficit) in the transaction on a mark-to-market basis. In those countries where settlement is on a seller's option basis rather than on a customary settlement cycle, the settlement date for purposes of this alternative will be considered to be a day not more than thirty days from the trade date;
2. The broker-dealer will file a written notice with the national securities exchange or registered national securities association which is its designated examining authority ("DEA") of its intention to apply this alternative in lieu of the requirements of Rules 15c3-3(d) and (m). This election will be without prejudice to the broker-dealer's right to buy-in or take other appropriate action with respect to a foreign securities transaction; and
3. The broker-dealer will maintain in its records a schedule of the current settlement cycle of each country in which it trades.

We have also discussed and agreed upon certain reporting by broker-dealers which choose these alternative procedures, which are set forth below.

Based on the foregoing, the Division will not recommend any action to the Commission if a broker-dealer fails to execute a "buy-in" under paragraph (d) (2) or paragraph (m) of Rule 15c3-3 for foreign issued, foreign settled securities if (1) it adheres to the alternate procedures described above and (2) maintains and preserves separate records, in whatever form appropriate, detailing, by country, the total number of failed to receive contracts and the total number of long sale transactions with customers where the broker-dealer has not obtained possession of the securities, pursuant to paragraph (m), when the alternate procedures have been relied upon, and the total contractual value of those contracts and transactions.

All other no-action letters relating to this subject should be considered withdrawn and may no longer be relied upon.

You should understand that the position expressed herein is a staff position with respect to enforcement only and does not purport to express any legal conclusion on this matter. The Division expects to monitor this program to assure that the procedures outlined function in a manner consistent with the objectives of Rule 15c3-3. The Division's position is necessarily confined to the facts as represented herein. Any material change in these conditions must be brought to the Division's attention immediately.

Sincerely,



Michael A. Macchiaroli
Assistant Director