

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

DIVISION OF MARKET REGULATION

April 27, 1987

Mr. Joseph G. Schisler

Manager of Internal Audit

Stifel, Nicolaus & Co., Inc.

500 N. Broadway St. Louis, Mo. 63102

Dear Mr. Schisler:

This responds to your letter dated November 14, 1986 wherein you ask about the treatment of aged transfers of securities under the reserve formula calculation of the Customer Protection Rule, 17 CFR §240.15c3-3a, promulgated under the Securities Exchange Act of 1934.

Line 9 of Exhibit A - Formula for Determination of Reserve Requirement for Brokers and Dealers - requires a registered broker-dealer to include as a credit in the reserve formula the "market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days." You question whether the item in transfer must be reconfirmed once every 40 calendar days thereafter. You contend that a single confirmation within the first 40 calendar days after transfer is sufficient based upon your interpretation of the Rule and its legislative history, particularly Securities Exchange Act Release No. 9775 (September 14, 1972). In support of your position, you note that the possession or control requirement under subparagraph (c)(3) of Rule 15c3-3 is satisfied by a single confirmation. Furthermore, Rule 17a-13 (17 CFR §240.17a-13) requires periodic reconfirmation of the securities in transfer.

It is the view of the Division of Market Regulation that the broker-dealer must include in item 9 of the Formula only the market values of those securities in transfer in excess of 40 days which have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 day period. Once the securities have been appropriately confirmed, no further confirmation is necessary to avoid a credit item in the formula as to securities in transfer.

It should be noted that subparagraph (b)(3) of Rule 17a-13 requires a registered broker-dealer to "verify all securities in transfer ... or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days." The broker-dealer must make this verification at least once each calendar quarter-year as part of its quarterly count. To verify a security in transfer the broker-dealer must obtain a written statement from the issuer or its transfer agent acknowledging the transfer instructions and possession of the security.

Should you have any further questions regarding this matter please feel free to contact me at (202) 272-2909.

Sincerely,

Michael T. Dorsey

Staff Attorney

STIFEL, NICOLAUS & COMPANY

INCORPORATED INVESTMENT SERVICES SINCE 1890

500 N. Broadway, St. Louis, Mo. 63102, 314-342-2000

November 14, 1986

Security and Exchange Commission

Mr. Michael Maccharoli

450 Fifth Street N.W. Washington, D.C. 20549

Dear Sirs:

We are seeking a clarification of Custody and Control and reserve computation requirements pertaining to Aged Security Transfers. These pertinent code sections are 15c3-3(c)(3) and 15c3-3a Exhibit A item 9.

It is our understanding that Rule 15c3-3's primary intent as stated in Release No. 34-9622 was to "offer further customer protection by requiring an increase in the amount of the cash reserve under the formula to the degree a firm fails to

promptly obtain possession or control ... loses controls of its records." It further stated, "one of the consequences of faulty records is an increase, both with respect to quantity and aging, in such items as securities in transfer, of customer reserve also increases."

We have received verbal interpretations from NYSE examiners that 15c3-3 requires:

1. Items in transfer must be confirmed within 40 days of transmittal in order to remain valid control positions per section (c)(3). Once confirmed they do not need to be re-confirmed in order to remain valid control positions (Rules 17a-13 and 440 do specify procedures for cyclical confirmation and position verification which are not at issue).
2. Items sent to transfer must be confirmed within the 40 days in order to be excluded from the credit in the reserve formula, line 9. Per the NYSE, items in transfer must be constantly reconfirmed every 40 calendar days. If an item previously confirmed (within the 40 calendar days of being transmitted to the agent), is not reconfirmed within 40 days after the valid receipt of the first confirmation, it will then become a reserve credit in line 9 even though it is still considered a valid custody and control position.

We disagree with interpretation number two. In our opinion, a credit in the formula should be required for aged transfers only when we no longer have control or possession of customer securities. If we have met the required control provision of 15c3-3(c)(3) we should not be required to include the item as a reserve credit on line 9.

The NYSE has expressed its concern with old transfer positions never being resolved as was the case in 1967-1970 back office crisis. We share that concern and believe our firm's procedures pursuant to 17a-13 and Rule 440 meet this concern.

It is also our opinion that if the commission truly intended the final version of Item 9 of the reserve formula to mean items should be excluded only if confirmed during the most recent 40 days it would not have deleted the words "most recent" from the language of then line 12 now line 9 in the subsequent rule revisions. The revision which deleted "most recent" reaffirmed that the reserve "would be tied by

formula directly to, among other things, the age and quantity of failures to possess or control customers' securities" (Exchange Release No. 9775).

In summary, we believe that Aged Transfers which are no longer considered within our control as defined under 15c3-3(c)(3) (e.g. unconfirmed and over 40 days from date of transmittal) must be included in the reserve computation line 9 as a credit until such time they are again within our control. The relationship of valid custody and control positions to the reserve formula (Item 9) is critical to interpreting and assuring the protection of client securities.

We believe the current regulatory rules of Cycle Counts and Position comparisons which require reserve and capital charges for position differences, which we vigorously support, are adequate for the protection of customers.

Please consider this matter as promptly as possible. I can be reached at area code 314-342-2791.

Sincerely,

Joseph G. Schisler

Manager of Internal Audit

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