

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549

DIVISION OF MARKET REGULATION

June 17, 1988

Mr. Scott H. Rockoff

Assistant Vice President

External and Regulatory Reporting

The First Boston Corporation Five World Trade Center

New York, New York 10048

Dear Mr. Rockoff:

This is in response to your January 20, 1988 letter on behalf of the First Boston Corporation ("First Boston") regarding the requirement to maintain possession or control of securities subject to hold-in custody repurchase agreements under Securities Exchange Act Rule 15c3-3(b)(4) (17 C.F.R. §240.15c3-3(b)(4)).

We understand the facts to be as follows: First Boston enters into repurchase agreements involving foreign securities, and retains possession or control of the securities underlying those agreements. Subparagraph (b)(4)(i)(D) requires a broker-dealer that retains custody of securities that are the subject of a repurchase agreement ("hold-in custody repo") to maintain possession or control of these securities. Subparagraph (b)(4)(ii) limits the locations that securities subject to hold-in custody repos can be maintained locations to those described in paragraphs (c)(3), (c)(5) and (c)(6) of Rule 15c3-3. Those designated locations do not include foreign control locations. You contend that foreign securities in many cases may only be held in foreign locations and in any event it is desirable to hold them in locations which make delivery more feasible. You ask if the Division will issue a no-action position that will allow First Boston to maintain securities subject to hold-in custody repos in approved foreign control locations.

Under the circumstances, the Division will raise no questions nor recommend any action to the Commission if First Boston deems foreign securities which are the subjects of hold-in custody repurchase agreements to be in its control to the same

extent it could deem fully-paid customer foreign securities to be in its control, pursuant to paragraphs (c)(4) and (c)(7) of Rule 15c3-3. See Securities Exchange Act Release No. 10429 (October 12, 1973).

If you have any questions please feel free to call.

Sincerely,

Michael A. Macchiaroli

Assistant Director

The First Boston Corporation

Five World Trade Center

New York, New York 10048

Telephone: 212/909-2000

January 20, 1988

Michael A. Macchiaroli

Division of Market Regulation

Securities and Exchange Commission

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

Re: Hold in Custody Repurchase Transactions - Section 15(c) of the Securities Exchange Act of 1934, and Rule 15c3-3 promulgated thereunder

Dear Mr. Macchiaroli:

This inquiry relates to the recent amendments to Rule 15c3-3 (Release No. 34-24778), as promulgated under the Securities Exchange Act of 1934 ("Exchange Act"). Specifically, we respectfully request that you confirm that the staff of the Securities and Exchange Commission ("Commission") will not recommend any enforcement action against The First Boston Corporation ("First Boston") if it engages in hold in custody repurchase agreements whereby First Boston holds foreign securities (the securities which are the subject of the repurchase transaction) in a foreign control

location. The foreign control locations that First Boston intends to use for hold in custody repurchase transactions have already been approved as satisfactory control locations for the general possession and control requirements of Rule 15c3-3(c)(4).

I. Background

First Boston is a broker-dealer registered pursuant to Section 15(a) of the Exchange Act. As part of First Boston's business, it engages in the purchase and sale of, and enters into repurchase agreements involving, foreign securities. Pursuant to the repurchase transactions, First Boston will sell foreign securities to the counterparty, will receive currency from the counterparty, and will simultaneously agree to repurchase the foreign securities at a future date at a specific price. The repurchase transaction will often be done on a hold in custody basis, whereby First Boston does not make delivery of the foreign securities, but, instead, holds the securities in safekeeping at foreign custodian banks during the lifetime of the repurchase transaction. As previously mentioned, these foreign custodian banks have previously been approved by the Commission as good control locations for purposes of Rule 15c3-3(c)(4).

First Boston enters into the repurchase transactions as a financing mechanism for long positions in foreign securities (usually foreign government and agency bonds, but occasionally foreign corporate debt securities), and those foreign securities are used as the collateral for the repurchase transactions. First Boston will finance the purchase of the foreign securities by entering into a U.S. dollar repurchase transaction whereby First Boston receives U.S. dollars. First Boston will then exchange the U.S. dollars for foreign currency, which in turn is used to pay for the foreign securities that are the subject of the repurchase transaction. First Boston uses repurchase transactions to finance the foreign positions because it is usually less expensive than other sources of funds, e.g. bank loans. Additionally, the counterparties to the repurchase transactions, who are large foreign financial institutions such as foreign banks and commercial import/export companies, often require that the securities be held by custodians in the foreign locations.

II. Discussion

As a result of a recent change to Rule 15c3-3, First Boston's use of the foreign locations for the hold in custody repurchase transactions will be prohibited on January 31, 1988 unless the requested relief is granted. Accordingly, for the reasons discussed below, First Boston respectfully requests that foreign locations be deemed satisfactory control locations for hold in custody repurchase transactions.

Effective January 31, 1988, a new paragraph (b)(4) has been added to Rule 15c3-3. This new section adds certain requirements for repurchase agreements between a broker or dealer and certain counterparties whereby the broker or dealer retains custody of the securities that are the subject of the repurchase transaction. Among the new requirements for hold in custody repurchase transactions is that the broker or dealer must maintain possession or control of the subject securities. Rule 15c3-3(b)(4)(ii) describes satisfactory control locations for hold in custody repurchase transactions by referring to portions of Rule 15c3-3(c). That section specifies certain control locations (including approved foreign depositories, foreign clearing agencies and foreign custodian banks) which are allowable for purposes of the general possession and control requirements of Rule 15c3-3. Section 15c3-3(b)(4)(ii), however, with reference to hold in custody repurchase agreements, does not authorize as good control locations for hold in custody repurchase transactions foreign depositories, foreign clearing agencies and foreign custodian banks.

Apparently, the foreign locations were excluded from the hold in custody amendments, not because of any inherent lack of safety of these foreign locations, but because it was not recognized that broker-dealers engage in hold in custody repurchase transactions involving foreign securities. But broker-dealers often do engage in such transactions, because, as previously mentioned, repurchase transactions are often the least expensive source of funds in the foreign jurisdiction. Furthermore, as a practical matter, it would be virtually impossible to use a domestic control location for such transactions because of logistical and securities registration hurdles. Additionally, the repurchase agreements are usually on a hold in custody basis because the transactions are usually short term and it is extremely expensive to register the foreign securities in the counterparty's name, and then re-register the foreign securities in the broker-dealer's name at maturity of the repurchase transaction. As a result, the new (b)(4) amendments will

substantially increase costs to broker-dealers without providing any additional regulatory protection.

Finally, in addition to the customer protection afforded to the counterparties by the possession and control requirements of Rule 15c3-3, the counterparties indirectly, and First Boston directly, are protected by the repurchase transaction net capital requirements of Rule 15c3-1(c)(2)(iv)(F).

III. Conclusion

Based on the foregoing, First Boston respectfully requests that the staff of the Commission advise us that it will not recommend that any action be taken against First Boston pursuant to Rule 15c3-3(b)(4) if it engages in hold in custody repurchase transactions using previously approved foreign control locations. Please feel free to contact me at (212) 322-1287 if you have any questions in this matter.

Sincerely,

Scott H. Rockoff

Assistant Vice President

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