

Mr. Owen W. Jaeger
Administrative Vice President and Treasurer
UBS-DB Corporation Forth Wall Street
New York, New York 10005

Dear Mr. Jaeger:

This letter is in response to your letter of December 21, 1976 on behalf of the UBS-DB Corporation ("UBS-DB") in which you inquired whether it would be appropriate for UBS-DB to calculate its reserve requirements in accordance with the Division's letter to Swift-Henke & Co., Inc., dated August 28, 1976.

I understand further that UBS-DB wishes to inquire whether foreign banks should be treated as brokers or dealers, rather than as customers, for the purpose of making computations pursuant to Rules 15c3-1 and 15c3-3 (17 CFR. 240.15c3-1, 15c3-3) under the Securities Exchange Act of 1934 (the "Act").

The letter to Swift-Henke & Co., Inc. is of general application and may be used according to its terms by any broker-dealer. For purposes of the allocation procedure set forth in that letter, a foreign bank should only be treated as a broker or dealer under the following circumstances:

1. To be treated as a broker, the foreign bank must be engaged in the business of effecting transactions in securities for the account of others within the meaning of Section 3(a)(4) of the Act.
2. To be treated as a dealer, the foreign bank must be engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but must not buy or sell securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business, within the meaning of Section 3(a)(5) of the Act.
3. In addition, to be treated as either a broker or dealer, the foreign bank must not fall within the definition of "bank" set forth in Section 3(a)(6) of the Act, which provides as follows:

"The term 'bank' means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under Section 11(k) of the Federal Reserve Act, as amended, and which is supervised and examined by State or Federal authority having supervision over banks and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution included in clauses (A), (B), or (C) of this paragraph."

We have not received sufficient facts to determine whether the foreign banks with whom UBS-DB conducts transactions should be treated as customers or broker-dealers for purposes of making computations pursuant to Rules 15c3-1 and 15c3-3. Such a determination must be made in accordance with the criteria set forth above.

Please contact us if we may be of further assistance.

Sincerely,

Nelson S. Kibler

Assistant Director

OWEN W. JAEGER ADMINISTRATIVE VICE PRESIDENT AND TREASURER (212) 422-5800

December 21, 1976

Mr. Daniel J. Piliero II Securities and Exchange Commission 1500 North Capitol Street Washington, D.C. 20549

Dear Mr. Piliero:

UBS-DB Corporation is a U. S. registered broker-dealer, owned 50% each by Deutsche Bank (Germany) and Union Bank of Switzerland (Underwriters) Limited (Bermuda). Approximately sixty-one percent (61%), of all transactions are

conducted with domestic brokers, six percent (6%) with foreign brokers, thirty-two percent (32%) with foreign banks which conduct securities transactions for themselves or for their customers, and one percent (1%) with domestic institutions. These transactions may be on either an agency or principal basis. All business is conducted on a delivery versus payment basis except for certain foreign bank and broker trades where securities are delivered in free.

In addition, certain foreign banks and brokers pay for securities which are then put into transfer in accordance with their instructions. As a result, free credit balances are generated in these accounts from time to time. We carry no margin accounts for customers. We have been advised by our accountants, Coopers, Lybrand, that foreign banks and/or foreign brokers are treated as domestic brokers for purposes of both Rule 15c1-1 and Rule 15c3-3.

Since the intent of Rule 15c3-3 is to protect customers, as defined in 17CFR240.15c3-3(a)(1), which represents one percent of our accounts, the treatment of both foreign banks, foreign brokers, and domestic brokers in the reserve formula causes the following problems:

1. The interpretation by the Division of Market Regulation (Release No. 11497), dated June 26, 1975, in which "fails to receive which are not allocable to long positions in the proprietary or other accounts of the broker or dealer and fails to deliver which are not allocable to short positions in the proprietary or other accounts of the broker or dealer are customer related and should be included in the computation of the Reserve Formula", injects credit balances in the reserve computation which have no relationship to our customer activity.
2. If the alternative method for computing net capital is chosen, the "aggregate debits" account to be used in the calculation of the capital requirement under Rule 15c3-1(f) is inflated.
3. The mechanics of the calculation are time-consuming and burdensome.

We believe it is appropriate to request relief from this interpretation and calculate our reserve requirements in the same manner that was proposed by the Securities

and Exchange Commission in its response to the letter by Swift, Henke & Co., Inc., dated December 22, 1975.

Your response is reiterated below:

"In consideration of the above, the Division will raise no question if broker-dealers compute the amounts included in items 1, 4, 5, 10, and 12 of the Reserve Formula for the purposes of computing net capital pursuant to Rule 15c1-1(f) and for the purposes of computing the reserve requirement pursuant to Rule 15c3-3(e) in the following manner:

A. All transactions which are allocable to customers (e.g. agency transactions and/or simultaneous principal purchase or sale transactions with customers) shall be included in the formula; and

B. For those transactions that cannot be allocated to customers' transactions, the following procedures shall be applied:

1. Customer Purchases

(a) If customers are long fully paid or excess margin securities and the customer possession or control requirements prescribed by paragraph (b), of Rule 15c3-3 are satisfied, no credit entry to the Reserve Formula is required;

(b) If customers are long fully paid or excess margin securities and if the broker-dealer has not obtained possession or control of customers' securities as required by Rule 15c3-3(b),

(i) Where there are securities of the same issue and class located in bank loan, stock loan, or short in the broker-dealer's proprietary account, the market value of such securities must be entered into the appropriate item on the credit side of the formula; and/or

(ii) There are securities of the same issue and class in fail to receive, the fail to receive with the highest contract price shall be entered into item 4 of the formula.

(c) Only customer debits shall be included in the Reserve Formula in cases (a) and (b) above.

2. Customer Sales

(a) For the purposes of determining the amount of "other credit balances" to be included in item 1 of the 'Reserve Formula', transactions involving the purchase of securities by a broker-dealer from customers as principal, where such securities have not been received in good deliverable form by the broker-dealer, may be excluded in determination of "other credit balances". However, if there is a related debit item in the formula (e.g. the security has been resold giving rise to a fail to deliver) then both the debit and the credit balance shall be included in the formula; (b) Where the securities sold have been received from the customer in good deliverable form and when such securities are not required for possession or control pursuant to Rule 15c3-3

(b), the broker-dealer, after allocating any open fails to deliver first to fails to receive and proprietary short positions, may enter amounts representing any excess fails to deliver into the debit side of the Reserve Formula to the extent that such fails,

(i) Have not been allocated pursuant to A above;

(ii) Have not been outstanding in excess of 30 days past settlement date."

The above approach can be used for the treatment of foreign banks and foreign brokers as domestic brokers and is an acceptable solution in calculating our customer reserve and net capital requirement. Your prompt attention to this matter would be appreciated, inasmuch as Coopers and Lybrand will be conducting their annual examination of our accounts as of December 31, 1976.

Very truly yours,

Owen W. Jaeger