



DIVISION OF  
MARKET REGULATION

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

April 14, 1989

Donald P. Madden, Esq.  
White & Case  
1155 Avenue of the Americas  
New York, New York 10036

Dear Mr. Madden:

This responds to your March 8, 1988 letter, on behalf of SBCI Swiss Bank Corporation Investment banking Inc. ("SBCI"), concerning the treatment of proprietary positions in nonconvertible debt securities issued or guaranteed by Swiss Bank Corporation, an affiliated entity, for purposes of the Net Capital Rule, Rule 15c3-1 under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c3-1).

We understand the pertinent facts to be as follows: SBCI, a registered broker-dealer and New York Stock Exchange, Inc. member firm, conducts a general securities business. All of the capital stock of SBCI is owned by SBCI Holding, a Swiss corporation which is, in turn, wholly owned by Swiss Bank Corporation (the "Bank"), a Swiss bank headquartered in Basle, Switzerland. The Bank conducts a general banking business in New York City through its New York branch (the "New York Branch"), which is supervised and examined by the New York State Banking Department.

The New York Branch creates banker's acceptances and issues certificates of deposit and medium-term notes; it may issue other nonconvertible debt securities in the future. In addition, the Bank, from its Basle headquarters, guarantees commercial paper issued by a United States affiliated company for the purpose of financing current transactions in the Bank's international operations. SBCI expects that it will occasionally act as underwriter for these various types of debt issued by its affiliates. In addition to its activities as underwriter, SBCI expects to contribute to an orderly secondary market by bidding for and otherwise dealing in these instruments and may need to carry them for periods exceeding two business days.



SBCI intends to finance the total market value of any positions issued or guaranteed by its affiliate if it seeks to treat them as allowable assets for a period exceeding two business days, through loans from Swiss Bank Corporation. Moreover, Swiss Bank Corporation will furnish SBCI with an equity commitment guaranteeing that Swiss Bank Corporation will forgive the loans to SBCI by making (through SBCI Holding) an equity contribution to SBCI in an amount equal to any Swiss Bank Corporation liabilities (including affiliate commercial paper guaranteed by Swiss Bank Corporation) held by SBCI that Swiss Bank Corporation fails to redeem upon presentment for payment. SBCI Holding agrees to treat such forgiven loans as contributions to the equity capital of SBCI. Thus, upon Swiss Bank Corporation's failure to make proper timely payment for any instrument issued or guaranteed by it and held by SBCI, SBCI may cancel its loan from Swiss Bank Corporation in an amount equal to the face value of the instrument in default.

It is the position of the Division that proprietary positions in debt instruments issued by a parent or an affiliated entity will receive no net capital value if they are held by a related broker-dealer for more than two business days. However, based on the foregoing facts, the Division will raise no question nor recommend any action to the Commission if SBCI treats proprietary positions, held longer than two business days, consisting of certificates of deposit, bankers' acceptances, nonconvertible debt securities, and similar instruments issued by Swiss Bank Corporation or affiliates as allowable assets, under the following conditions: (i) Swiss Bank Corporation must finance the entire dollar market value of those positions; (ii) Swiss Bank Corporation must furnish SBCI with an equity commitment guaranteeing that Swiss Bank Corporation will forgive its loans to SBCI by making an equity contribution to SBCI in an amount equal to the market value of any instruments which are not redeemed when presented for payment; and (iii) the debt instruments must be exchangeable in complete satisfaction of the financing should Swiss Bank Corporation become insolvent, or alternatively, the financing must provide that the loans will not mature prior to the earlier of either: (a) the sale of the instruments by SBCI, or (b) the maturity or early redemption of the instruments. To the extent that the Division's letter to J.P. Morgan Securities, Inc., dated December 24, 1986, is inconsistent with this letter, the earlier letter should be disregarded.

Mr. Donald P. Madden  
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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's position is necessarily confined to the facts as you have represented herein; any material change may warrant a different result and should be brought to the attention of the Division.

If you have any further questions on this matter, please feel free to contact the undersigned.

Sincerely,

*Michael A. Macchiaroli*

Michael A. Macchiaroli  
Assistant Director

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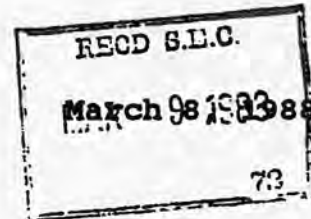
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1934 Act - Section 15(c)  
Rule 15c3-1

DPM:JF



Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Attention: Mr. Michael A. Macchiaroli  
Assistant Director, Market  
Operations & Surveillance,  
Division of Market Regulation

Dear Sirs:

We are writing on behalf of SBCI Swiss Bank Corporation Investment banking Inc. ("SBCI") to request that the Division of Market Regulation take a no-action position if SBCI treats proprietary positions in nonconvertible debt securities issued by Swiss Bank Corporation, an affiliated company, as allowable assets for net capital purposes pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).

SBCI is a registered broker-dealer and a member of the New York Stock Exchange, Inc. and conducts a general broker-dealer and underwriting business. All of the capital stock of SBCI is owned by SBCI Holding ("SBCI Holding"), a Swiss corporation wholly owned by Swiss Bank Corporation, a Swiss bank with headquarters in Basle. Swiss Bank Corporation conducts a general banking business in New York City through its New York branch (the "New York Branch"), which is supervised and examined by the New York State Banking Department.

The New York Branch issues certificates of deposit and bankers' acceptances in New York and it is contemplated



that in the near future the New York Branch will issue medium-term notes and may issue other nonconvertible debt securities. Swiss Bank Corporation from its Basle headquarters guarantees commercial paper issued by a U.S. affiliated company for the purpose of financing current transactions in the Bank's international operations. SBCI expects that from time to time it will act as underwriter of such commercial paper and of nonconvertible debt securities issued by the New York Branch and will contribute to an orderly after-market by bidding for and otherwise dealing in such securities. In so acting SBCI will be subject to the position of the Division of Market Regulation that a broker-dealer carrying proprietary positions in CDs, commercial paper or similar instruments issued by a parent or affiliated company will receive no net capital value for such positions held longer than two business days. SBCI anticipates that in some instances it will be desirable to carry debt securities issued or guaranteed by its parent company for more than two business days.

We understand that in the past the Division of Market Regulation has taken a no-action position regarding this "two-day rule" if appropriate steps are taken to protect a broker-dealer and its customers from the adverse effect of defaults upon securities issued by affiliates.

*See J. P. Morgan Securities Inc. (available January 26, 1987).* In order to conform to the Division's position, SBCI proposes that it will finance its purchases of affiliate commercial paper as described above and of debt securities issued by the New York Branch through loans made by Swiss Bank Corporation. To ensure that SBCI's customers will not be jeopardized while SBCI holds such securities, Swiss Bank Corporation will furnish SBCI with an equity commitment guarantying that Swiss Bank Corporation will forgive the loans to SBCI by making (through SBCI Holding) an equity contribution to SBCI in an amount equal to any Swiss Bank Corporation liabilities (including affiliate commercial paper guaranteed by Swiss Bank Corporation) held by SBCI which Swiss Bank Corporation fails to redeem when presented for payment. SBCI Holding will be a party to such commitment to confirm its agreement that the forgiven loan will be treated by SBCI Holding as a contribution to the equity capital of SBCI. Thus, upon the failure by Swiss Bank Corporation to make proper timely payment upon any such securities held by SBCI and issued or guaranteed by Swiss Bank Corporation, SBCI may cancel its loan from Swiss Bank Corporation in an amount equal to the face value of the securities defaulted upon.

We request your confirmation that, based upon the foregoing facts and if SBCI, Swiss Bank Corporation and SBCI Holding enter into the equity commitment described above, the Division of Market Regulation will raise no question nor recommend any action to the Commission if SBCI elects to treat proprietary positions it holds as underwriter or dealer in nonconvertible debt securities issued or guaranteed by Swiss Bank Corporation as allowable assets for net capital purposes, to the extent such positions are offset by borrowings from Swiss Bank Corporation which could be converted to equity capital of SBCI as described above.

Please direct any correspondence regarding this matter to Donald P. Madden or Duane D. Wall of this office.

Very truly yours,

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