



SECURITIES INDUSTRY ASSOCIATION

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November 22, 1989

Mr. Michael A. Macchiaroli
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Macchiaroli:

This letter is submitted on behalf of the Capital Committee of the Securities Industry Association ("SIA")^{1/}. SIA is seeking a no-action letter with respect to the applicability of the ready market and haircut provisions of Rule 15c3-1 of the Securities Exchange Act of 1934 (the "Rule") to securities of issuers not domiciled within the United States and held by U.S. broker-dealers which have no quoted market within the United States.

In 1975, the SEC staff issued a no-action letter to the

^{1/} The Securities Industry Association is the trade association representing over 600 securities firms headquartered throughout the United States and Canada. Its members include securities organizations of virtually all types--investment banks, brokers, dealers and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter market and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for approximately 90% of the securities business being done in North America.

International Committee of SIA ^{2/} interpreting the term "ready market" as defined in subparagraph (c)(11) of the Rule with respect to foreign securities. In that letter, the SEC staff set forth certain criteria, based on the relationship between investment quality and marketability and the fact of listing on an enumerated major foreign exchange, which indicate marketability and are to be applied for purposes of determining value under the Rule. Those criteria reflected the liquidity of the foreign securities market in 1975.

Since 1975, new foreign securities markets have been established and the volume of trading in foreign securities by U.S. broker-dealers has increased significantly. The increased capitalization, trading and participation in the foreign securities markets has created a global marketplace in which U.S. broker-dealers are now competing.

The interpretation of "ready market" contained in the 1975 letter disadvantages U.S. broker-dealers in the global marketplace because it no longer accurately assesses the liquidity of foreign securities and results, in some cases, in onerous haircuts on securities that trade in what are in fact demonstrably liquid markets.

As foreign securities markets have developed, so have new criteria emerged which can be utilized in more accurately determining liquidity. We therefore request that the following proposal, which we believe sets forth appropriate standards for determining the marketability of foreign securities for purposes of satisfying the requirements for a "ready market" under the Rule, be adopted as an interpretation to subparagraph (c)(11)(i) of the Rule.

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I. MARKETABILITY OF FOREIGN EQUITY SECURITIES

A ready market shall be deemed to exist for foreign equity securities if any one of the criteria in Category A applies or any two criteria from Category B are applicable.

CATEGORY A

1. The ADRs of the company are traded in the United States and are either listed on a U.S. exchange or

^{2/} December 29, 1975 letter from Nelson S. Kibler, Assistant Director, Office of Compliance and Financial Responsibility, (Footnote continued on next page)

quotations are reported by NASDAQ.

2. The issue is traded on a foreign exchange located in an OECD country or such exchange has an annual volume in excess of 25 billion U.S. dollar equivalent.
3. Non-NASDAQ quoted, non-U.S. exchange listed ADRs or non-NASDAQ quoted, non-U.S. exchange listed foreign equities are considered readily marketable up to the volume of the most recent four week exchange or inter-dealer trading volume, reduced by proprietary purchases. Volume in domestic and foreign markets may be aggregated.
4. The issue is included in an internationally recognized market index.*
5. The company is included in the Primary Alpha list in London.

CATEGORY B

1. The issue is traded on a foreign exchange in a non-OECD country.
2. The company has over 100 million in U.S. dollar equivalent net assets.
3. The issue is acceptable as collateral for margin debt under Regulation T.
4. The debt of the company has been rated in one of the top four rating categories by at least one recognized statistical rating organization.*

In the case of all other issues not meeting the criteria above, where there are bona fide offers to buy and sell in reasonable quantities at stated prices, or listed on a foreign exchange, deduct 40 percent of the carrying value for positions held under 30 days. Thereafter, increase the applicable net capital deduction by 5% each month until the capital value declines to zero.

(Footnote continued from previous page)
to Anthony M. O'Connor, Co-Chairman, International
Committee, Securities Industry Association.

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II. MARKETABILITY OF FOREIGN DEBT SECURITIES

A ready market shall be deemed to exist for the following foreign debt securities:

- 1) Debt securities of a foreign issuer not traded flat or in default as to principal or interest which are publicly issued in a principal foreign securities market by (a) a sovereign national government (or an entity guaranteed by such a government) or by a multi-governmental organization, or by (b) a Canadian province or municipality.
- 2) Debt securities of a foreign issuer not traded flat or in default as to principal or interest which were publicly issued in a principal foreign securities market (a) which have been rated in one of the top four rating categories by at least two internationally recognized statistical rating organizations*, or (b) securities of the same issuer which have been issued in the United States and have been rated in one of the top four rating categories by at least two nationally recognized statistical rating organizations* in the United States.
- 3) Debt securities of a foreign issuer not traded flat or in default as to principal or interest which are:
 - ✓ A) acceptable as collateral for margin debt under Regulation T or;
 - B) listed as having two or more market makers by the Association of International Bond Dealers (the "AIBD") or;
 - C) ✓ Issued or guaranteed by entities with equity securities which qualify as marketable under one of the criteria listed above or;
 - D) ✓ issued by companies registered with one of the internationally recognized securities exchanges in countries listed in Appendix A and whose outstanding amount at issuance was greater than \$50 million or;
 - E) guaranteed by an issuer of non-convertible debt which is rated in one of the four highest rating categories by at least two internationally recognized rating organizations.*
- 4) Derivative securities on securities deemed marketable pursuant to (1)-(4) above if the counterpart is a U.S.

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registered broker/dealer, a U.S. depository institution with net assets in excess of \$100 million, a foreign bank with net assets in excess of \$100 million which is subject to supervision by an authority of a sovereign national government, a multi-governmental organization, or a U.S. regulated investment company.

- 5) In the case of debt securities of a foreign issuer not traded flat or in default as to principal or interest, not meeting one of criteria listed above, treating these securities as readily marketable for a period of thirty (30) calendar days following settlement date. Thereafter, in the absence of further data, increasing the applicable net capital deduction by 5% each month until the capital value declines to zero.

- * We anticipate that the SEC will periodically update the listing of the indices and rating organizations included in these categories.

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SIA appreciates this opportunity to express its views on this issue. If you have any questions regarding this matter, please do not hesitate to contact the undersigned at 212 346-5107.

Very truly yours,



Paul J. Isaac
Chairman
Capital Committee

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APPENDIX A

Recognized Foreign Exchanges

Amsterdam

Brussels

Frankfurt

Johannesburg

London

Luxembourg

Montreal

Paris

Sydney

Tokyo

Toronto

Zurich