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

DIVISION OF
ET REGULATION

April 9, 1997

Giovanni P. Prezioso, Esq.
Cleary, Gottlieb, Steen & Hamilton
1752 N Street, N.W.
Washington, D.C. 20036-2806

Re: Securities Activities of U.S.-Affiliated Foreign Dealers

Dear Mr. Prezioso:

This letter responds to your letter dated March 24, 1997, on behalf of nine U.S. registered broker-dealers (the "Firms")[1] in which you request assurances that the staff will not recommend enforcement action to the Commission against any of the Firms or any foreign broker or dealer affiliated with any of the Firms (a "U.S.-Affiliated Foreign Dealer") if any of the U.S.-Affiliated Foreign Dealers engages in the securities activities described in your letter without registering as a "broker" or "dealer" under Section 15 of the Securities Exchange Act of 1934 ("Exchange Act") in reliance on the exemption from broker-dealer registration in Exchange Act Rule 15a-6.

As you note in your letter, in the years since the Commission adopted Rule 15a-6, internationalization of the securities markets has continued to accelerate. One result is that U.S. and foreign securities firms compete with one another to offer a wide range of financial products and services to their customers. In addition, institutional investors have taken a global approach in formulating their investment strategies. Moreover, the expanded use of

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[1] The Firms are Bear Stearns & Co. Inc.; Credit Suisse First Boston Corporation; CSFP Capital, Inc.; Goldman, Sachs & Co.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith, Incorporated; Morgan Stanley & Co. Incorporated; Salomon Brothers Inc; and Smith Barney Inc.

electronic communication technology has facilitated the dissemination of securities-related information and cross border trading activity, further developing the interrelationship between U.S. and foreign markets. You request relief from the staff on a number of specific aspects of Rule 15a-6 that you believe pose significant obstacles to the effective operation of international securities activities by U.S. broker-dealers and their foreign affiliates.[2]

I. Expanded Definition of "Major U.S. Institutional Investor"

Rule 15a-6, among other things, permits foreign broker-dealers to conduct certain securities activities with "U.S. institutional investors" and "major U.S. institutional investors," as those terms are defined in the Rule, provided that those foreign broker-dealers conduct those activities in conformity with the provisions of Rule 15a-6. These definitions do not include U.S. business corporations and partnerships, nor do they permit investment funds to qualify as major U.S. institutional investors if they are advised by investment managers that are exempt from registration under the Investment Advisers Act of 1940. It is your belief that these investors may have financial wherewithal comparable to that of institutional investors covered by the Rule, and that the Rule's failure to include these investors within the definitional criteria set forth in the Rule severely constrains the utility of the Rule 15a-6 exemption.

As a result, you request the staff to provide no-action relief that will permit U.S.-Affiliated Foreign Dealers to expand the range of U.S. investors with which they may enter into securities transactions in reliance on paragraph (a)(3) of Rule 15a-6. Specifically, you request that the staff grant no-action relief that will permit, on the same basis as permitted

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[2] You note that comparable issues arise in connection with the registration requirements for foreign government securities brokers or dealers under the Government Securities Act of 1986, codified at Section 15C of the Exchange Act. The Department of the Treasury, pursuant to its authority under Exchange Act Section 15C(a)(5), has adopted an exemptive rule that largely parallels Rule 15a-6. See 17 C.F.R. § 401.9. Accordingly, pursuant to 17 C.F.R. § 400.2(d), you request that any no-action or interpretive relief granted by the staff in response to this request with respect to the application of Section 15(a) of the Exchange Act and Rule 15a-6 also apply equally with respect to the entities that are subject to 17 C.F.R. § 401.9.

for transactions with "major U.S. institutional investors" under Rule 15a-6, a U.S.-Affiliated Foreign Dealer to enter into transactions with any entity, including any investment adviser (whether or not registered under the Investment Advisers Act), that owns or controls (or, in the case of an investment adviser, has under management) in excess of $100 million in aggregate financial assets (i.e., cash, money-market instruments, securities of unaffiliated issuers, futures and options on futures and other derivative instruments).[3]

II. Direct Transfer of Funds and Securities Between U.S. Investors and U.S.-Affiliated Foreign Dealers

You also request relief from a provision of Rule 15a-6(a)(3) that requires a U.S. registered broker-dealer to intermediate transactions between U.S.-Affiliated Foreign Dealers and U.S. institutional investors and major U.S. institutional investors. In particular, you note that paragraph (a)(3)(iii)(A)(6) of Rule 15a-6 requires that a U.S. broker-dealer intermediary be responsible for receiving, delivering, and safeguarding funds and securities in connection with transactions between U.S.-Affiliated Foreign Dealers and U.S. institutional investors and major U.S. institutional investors in compliance with Rule 15c3-3 under the Exchange Act. It is your contention that Rule 15a-6(a)(3)(iii)(A)(6) is unclear in circumstances where a U.S. investor and a foreign broker-dealer wish to settle a securities transaction intermediated by a U.S. broker-dealer involving the direct transfer of funds and securities. In particular, you note that questions have arisen regarding whether, under the Rule, the clearance and settlement of all such transfers must be effected through the accounts of the U.S. broker-dealer intermediating the transaction.

Interposition of a U.S. broker-dealer in the clearance and settlement process, you contend, causes a significant duplication of functions by the U.S. broker-dealer and foreign broker-dealer, including effecting duplicate transfers of funds and securities. You argue that

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[3] You note that the asset test would be calculated on a gross basis, without deduction for liabilities of the institution, based on the balance sheet or comparable financial statement of the institution prepared in the ordinary course of its business. You also note that the requested relief in this context would apply to transactions in U.S. and foreign securities.

this duplication of functions is inefficient and increases the risk of operational errors and settlement failure. As a result, you ask the staff to confirm that in transactions involving foreign securities[4] or U.S. Government securities intermediated by a U.S. broker-dealer under Rule 15a-6, clearance and settlement may occur through the direct transfer of funds and securities between a U.S. investor and a foreign broker-dealer in situations where the foreign broker-dealer is not acting as custodian of the funds or securities of the U.S. investor. For such transactions in such securities the U.S. investor or its custodian could transfer funds or such securities directly to the foreign broker-dealer or its agent and the foreign broker-dealer or its agent could transfer any funds or such securities directly to the U.S. investor or its custodian. This requested relief would apply only in circumstances where (1) the foreign broker-dealer agrees to make available to the intermediating U.S. broker-dealer clearance and settlement information relating to such transfers and (2) the foreign broker-dealer is not in default to any counterparty on any material financial market transaction. Moreover, the requested relief would apply solely to the operational issue of the transfer of funds and securities between a foreign broker-dealer and a U.S. institutional investor or major U.S. institutional investor (including those investors with which a U.S.-Affiliated Foreign Dealer would be able to enter into transactions pursuant to the relief you request in Part II.A of your letter) in the context of clearance and settlement of transactions in foreign securities or U.S. Government securities between that foreign broker-dealer and that U.S. investor where the foreign broker-dealer is not acting as custodian for the U.S. investor.

You note that the granting of such relief should not be construed to suggest that the staff has made any implicit or explicit determinations regarding the permissibility of any particular transaction or custodial arrangement related to such a transfer. In this regard, you acknowledge that the foreign broker-dealer would continue to be required to ensure that each

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[4] You use the term "foreign securities" as defined in your previous correspondence relating to Rule 15a-6. See Cleary, Gottlieb, Steen & Hamilton (November 22, 1995, revised January 30, 1996).

such transaction and any custodial arrangement qualifies in all other respects for exemption under the Rule, even though the direct transfer of funds and securities would be permitted to occur as described above. Finally, you note that the intermediating U.S. broker-dealer would fulfill all of the other enumerated duties under paragraph (a)(3)(iii)(A) of the Rule, including effecting the transactions, issuing required confirmations and maintaining required books and records relating to the transactions.

III. Permissible Contacts with U.S. Investors by Foreign Associated Persons of U.S.-Affiliated Foreign Dealers

You also request relief from the provisions of Rule 15a-6 that require an associated person of a U.S. broker-dealer intermediary to participate in certain communications between foreign associated persons of a foreign broker-dealer and certain U.S. investors. In particular, you note that paragraph (a)(3)(iii)(B) of Rule 15a-6 requires that an associated person of the U.S. broker-dealer intermediary participate in all oral communications between foreign associated persons and U.S. institutional investors other than major U.S. institutional investors, and that paragraph (a)(3)(ii)(A)(1) of Rule 15a-6 requires participation by an associated person of the U.S. broker-dealer intermediary in connection with visits in the United States by a foreign associated person with both U.S. institutional investors and major U.S. institutional investors.

1. Chaperoning Requirements

You argue that these "chaperoning" requirements have proven awkward to implement in practice, particularly in the context of those markets that are separated from the U.S. by a large number of time zones. You contend that they also provide only slight policy benefits in light of the experience and capabilities of the U.S. institutional investors eligible to enter into transactions under paragraph (a)(3) of Rule 15a-6 and the other investor protections provided by the Rule, such as the requirement that the foreign associated person not be subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.

Accordingly, you request that the staff grant no-action relief that would permit foreign associated persons of a U.S.-Affiliated Foreign Dealer, without the participation of an

associated person of an affiliated Firm,[5] to: (1) engage in oral communications from outside the United States with U.S. institutional investors where such communications take place outside of the trading hours of the New York Stock Exchange (i.e., at present, 9:30 a.m. to 4:00 p.m. New York Time), so long as the foreign associated persons do not accept orders to effect transactions other than those involving foreign securities (as defined in note 5 of your letter) and (2) have in-person contacts during visits to the United States with major U.S. institutional investors (including those investors with which a U.S.-Affiliated Foreign Dealer would be able to enter into transactions pursuant to the relief requested in Part II.A of your letter), so long as the number of days on which such in-person contacts occur does not exceed 30 per year and the foreign associated persons engaged in such in-person contacts do not accept orders to effect securities transactions while in the United States.[6]

2. Electronic Quotation Systems

In addition, you seek relief with respect to the U.S. distribution of foreign broker-dealers' quotations. In the release adopting Rule 15a-6, the Commission indicated that the Rule "generally would permit the U.S. distribution of foreign broker-dealers' quotations by third party systems...that distributed these quotations primarily in foreign countries" provided that the third-party systems did not allow securities transactions to be executed between the

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[5] As you note, foreign associated persons of the U.S.-Affiliated Foreign Dealers could continue to have "unchaperoned" contacts with U.S. persons at any time if they are dually employed or "two-hatted" (i.e., also qualified as registered representatives acting on behalf of and under the supervision of an affiliated Firm under U.S. self-regulatory organization guidelines).

[6] As you request, the staff is clarifying that the limitations set forth in paragraph (a)(2)(ii) of Rule 15a-6 would not prohibit a foreign broker-dealer from initiating follow-up contacts with major U.S. institutional investors (including those entities qualifying pursuant to the relief you request in Part II.A of your letter) to which it has furnished research reports, if such follow-up contacts occur in the context of a relationship between a foreign broker-dealer and a U.S. intermediary broker-dealer under the Rule.

foreign broker-dealer and persons in the U.S. through the systems.[7] In other words, in the absence of other contacts with U.S. investors initiated by the third party systems, distribution of such quotes by such systems would not be considered to be a form of solicitation.[8] Because third-party quotation services have become increasingly global in scope since Rule 15a-6 was adopted, it is your view that the distinction between systems that distribute quotations primarily in the U.S. and those that distribute quotations primarily in foreign countries is no longer a useful regulatory dividing line. As a result, as you request, the staff is clarifying that the interpretive portions of the Adopting Release requiring operation of quotation systems by third parties that primarily distribute foreign broker-dealers' quotations (including prices and other trade-reporting information input directly by foreign broker-dealers) in foreign countries no longer apply.

With respect to proprietary quotation systems, you highlight a passage from the Adopting Release where the Commission noted that "the direct dissemination of a foreign market maker's quotations to U.S. investors, such as through a private quote system controlled by a foreign broker-dealer would not be appropriate without registration, because the dissemination of these quotations would be a direct, exclusive inducement to trade with that foreign broker-dealer." You note, however, that there is no express indication that the Commission's position in the Adopting Release is intended to preclude a foreign broker-dealer from directly inducing U.S. investors to trade with the foreign broker-dealer via a quotation system where the U.S. investor subscribes to the quotation system through a U.S. broker-dealer, the U.S. broker-dealer has continuing access to the quotation system, and the foreign broker-dealer's other contacts with U.S. investors are permissible under Rule 15a-6.

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[7] See Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30,013 (July 18, 1989) ("Adopting Release").

[8] As the Commission stated in the Adopting Release, however, foreign broker-dealers whose quotes were distributed through such systems would not be allowed to initiate contacts with U.S. persons "beyond those exempted under the Rule, without registration or further exemptive rulemaking."

In this regard, as you request, the staff is confirming that providing U.S. investors with access to screen-based quotation systems that supply quotations, prices and other trade-reporting information input directly by foreign broker-dealers will not constitute an impermissible contact with a foreign broker-dealer, so long as any transactions between the U.S. investor and the foreign broker-dealer are intermediated in accordance with the requirements of Rule 15a-6. As you note, a foreign broker-dealer that directs quotations to U.S. investors through a proprietary system (as distinct from a third-party system) would be viewed as having "solicited" any resulting transactions (and thus could not rely on the exemption in paragraph (a)(1) of Rule 15a-6), although it would continue to be allowed to effect transactions in reliance on other available provisions of the Rule.

Response:

While not necessarily agreeing or disagreeing with the reasoning contained in your letter, based on the facts and representations presented, the staff of the Division of Market Regulation will not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act against any of the Firms (or a similarly situated U.S. registered broker-dealer), any U.S.-Affiliated Foreign Dealer (or a similarly situated foreign broker-dealer) if any of the U.S.-Affiliated Foreign Dealers (or a similarly situated foreign broker-dealer) engages in the securities activities described in your letter without registering as a "broker" or "dealer" under Section 15 of the Exchange Act.[9]

This letter represents the views of the Division based on our understanding of the proposed activities of the U.S.-Affiliated Foreign Dealers as discussed in your letter. This staff position concerns enforcement action only and does not represent a legal conclusion regarding the applicability of the statutory or regulatory provisions of the federal securities laws. Moreover, this position is based solely on the representations that you have made, and

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[9] Consultations with staff of the Department of the Treasury have affirmed that this relief applies equally with respect to those entities that are subject to 17 C.F.R. § 401.9. See note 2 above.

any different facts or conditions might require a different response.

Sincerely,

Richard R. Lindsey
Director

cc: Roger Anderson
Deputy Assistant Secretary for Federal Finance
Department of the Treasury

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*NOT ADMITTED IN THE DISTRICT OF COLUMBIA

Securities Exchange Act of 1934
Section 15(a); Rule 15a-6

March 24, 1997

Office of Chief Counsel

MAR 2 6 1997

Division of Market Regulation

VIA HAND DELIVERY

Mr. Richard R. Lindsey
Director, Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Request for No-Action and Interpretive Relief Relating to Certain Securities Activities of U.S.-Affiliated Foreign Dealers

Dear Mr. Lindsey:

We are writing on behalf of our clients, listed in note 1 of this letter,[1] to request your advice that the staff would not recommend that the Securities and Exchange Commission (the "Commission") take any enforcement action against any of the Firms or any

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1 Bear, Stearns & Co. Inc.; Credit Suisse First Boston Corporation; CSFP Capital, Inc.; Goldman, Sachs & Co.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith, Incorporated; Morgan Stanley & Co. Incorporated; Salomon Brothers Inc; and Smith Barney Inc. (hereinafter referred to as the "Firms").

foreign broker or dealer affiliated with any of the Firms (a "U.S.-Affiliated Foreign Dealer") in the event that a U.S.-Affiliated Foreign Dealer engages in the securities activities described in Parts II.A through II.C of this letter without registering as a "broker" or "dealer" under Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

I. Background

In light of the growing internationalization of financial markets, the Commission provided securities firms in the late 1980's with significant guidance -- first through a series of no-action letters[2] and then through the adoption of Rule 15a-6 -- regarding the circumstances in which a foreign broker-dealer may engage in securities activities with U.S. persons without having to register under Section 15 of the Exchange Act.[3] In the years since adoption of Rule 15a-6, the internationalization of the securities markets has continued to accelerate. U.S. and foreign securities firms increasingly compete directly with one another to offer a comprehensive and cost-effective range of financial products and related services to their customers. At the same time, institutional investors have broadly come to consider it essential to take a global approach in formulating their investment strategy. In addition, the widespread availability of computer-based and related communication technologies has led to greater dissemination of securities-related information and trading activity across borders, and has heightened the interrelationship between U.S. and foreign markets.

Several aspects of the current U.S. regulatory regime unnecessarily restrict and hamper the global competitiveness of U.S. broker-dealers by severely limiting their ability to provide U.S. investors with access to securities products and local market expertise offered by foreign broker-dealers. In particular, Rule 15a-6 imposes a number of restrictions on both (i) the categories of institutional investors with which foreign broker-dealers may have contacts and (ii) the specific regulatory and procedural functions that must be performed by a U.S.

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2 See, e.g., National Westminster Bank PLC (July 7, 1988); Security Pacific Corporation (April 1, 1988); Chase Capital Markets U.S. (July 28, 1987).

3 Comparable issues arise in connection with the registration requirements for foreign government securities brokers or dealers under the Government Securities Act of 1986, codified at Section 15C of the Exchange Act. In this regard, the Department of the Treasury, pursuant to its authority under Section 15C(a)(5), has adopted an exemptive rule that largely parallels Rule 15a-6. See 17 C.F.R. § 401.9. Accordingly, pursuant to 17 C.F.R. § 400.2(d), the Firms request that any no-action or interpretive relief granted by the staff in response to this request with respect to the application of Section 15(a) of the Exchange Act and Rule 15a-6 also apply equally with respect to the entities that are subject to 17 C.F.R. § 401.9.

broker-dealer intermediating transactions between foreign broker-dealers and U.S. institutional investors. These restrictions have, in light of experience with the Rule and the evolution of the financial markets, proven unduly burdensome in many respects -- frequently in circumstances where they do not appear to achieve any clear offsetting regulatory benefits.

Accordingly, as a policy matter, the Firms strongly encourage the Commission to evaluate broad reforms to the U.S. regulatory regime that would enhance the competitiveness of U.S. securities firms and eliminate practical barriers to participation by their foreign affiliates in U.S. markets, while maintaining high standards of investor protection and market integrity in the United States and abroad. Moreover, a number of specific aspects of Rule 15a-6 pose significant obstacles to the effective conduct of international securities activities by U.S. broker-dealers and their foreign affiliates. In the Firms' view, the elimination of these obstacles requires especially prompt attention from the Commission that should not wait for the adoption of needed broader reforms. The Firms have therefore sought to identify, in Parts II.A through II.C below, those areas in which prompt interpretive or no-action relief from the staff would provide substantial benefits without compromising investor protection.

II. Proposed Relief

A. Expanded Definition of "Major U.S. Institutional Investor" in Rule 15a-6

Currently, the definitions of "major U.S. institutional investor" and "U.S. institutional investor" set forth in paragraphs (b)(4) and (b)(7) of Rule 15a-6, respectively, exclude a number of important categories of large and experienced institutional investors, thereby preventing foreign broker-dealers from effecting transactions with such investors in reliance on the exemption provided by paragraph (a)(3) of the Rule. Because direct contacts by a foreign broker-dealer with U.S. investors are permitted only if the investors meet these definitional criteria, the limitations under the current rule on eligible counterparties severely constrain the utility of that exemption.

At present, even the largest U.S. business corporations and partnerships do not qualify under the definitions of "U.S. institutional investor" and "major U.S. institutional investor." These business enterprises have a strong interest in obtaining direct access to foreign broker-dealers and form an important component of the investor base for which U.S. broker-dealers and their affiliates compete internationally. Moreover, these investors have the financial wherewithal and experience necessary to evaluate the potential rewards and risks of entering into transactions involving foreign broker-dealers.

In addition, a number of the most important institutional participants in the world financial markets are organized as investment funds advised by investment managers

exempt from registration under the Investment Advisers Act of 1940 (the "Investment Advisers Act") (typically because of the small number of clients that they advise). Because paragraph (b)(4) of Rule 15a-6 is never available for an unregistered adviser, the funds and other clients advised by these managers currently cannot qualify as "major U.S. institutional investors," despite their extensive experience in international markets and their substantial assets.

Accordingly, the Firms request that the Commission provide no-action relief that would expand the range of U.S. investors with which U.S.-Affiliated Foreign Dealers may enter into securities transactions in reliance on paragraph (a)(3) of Rule 15a-6. Specifically, the Firms request that the staff grant no-action relief that would permit, on the same basis as permitted for transactions with "major U.S. institutional investors" under Rule 15a-6, a U.S.-Affiliated Foreign Dealer to enter into transactions with any entity, including any investment adviser (whether or not registered under the Investment Advisers Act), that owns or controls (or, in the case of an investment adviser, has under management) in excess of $100 million in aggregate financial assets (i.e., cash, money-market instruments, securities of unaffiliated issuers, futures, options on futures and other derivative instruments).[4]

The requested relief would substantially enhance the utility of the paragraph (a)(3) exemption by extending its availability to transactions with important additional categories of investors whose experience and capabilities as to investment matters are comparable to those of "major U.S. institutional investors" that currently qualify under the Rule. In the Firms' view, no policy objective appears to be served by continuing to exclude such investors from the range of counterparties with which a U.S.-Affiliated Foreign Dealer may engage in transactions under the paragraph (a)(3) exemption, especially in light of the participation of a U.S. broker-dealer intermediary and the other protections afforded in transactions effected in reliance on that exemption.

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[4] We understand that the asset test would be calculated on a gross basis, without deduction for liabilities of the institution, based on the balance sheet or comparable financial statement of the institution prepared in the ordinary course of its business. We also understand that the requested relief would apply to transactions in U.S. and foreign securities.

B. Direct Transfer of Funds and Securities Between U.S. Investors and U.S.-Affiliated Foreign Dealers

Rule 15a-6(a)(3) explicitly requires that a U.S. registered broker-dealer intermediating transactions between U.S. investors and a foreign broker-dealer assume responsibility for certain regulatory requirements. Specifically, paragraph (a)(3)(iii)(A)(6) of Rule 15a-6 requires that a U.S. broker-dealer intermediary be responsible for "receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3-3" under the Exchange Act.

The application of paragraph (a)(3)(iii)(A)(6) is not entirely clear in circumstances where a U.S. investor and a foreign broker-dealer wish to settle a securities transaction intermediated by a U.S. broker-dealer involving the direct transfer of funds and securities. In particular, questions have arisen regarding whether, under the Rule, the clearance and settlement of all such transfers must be effected through the accounts of the U.S. broker-dealer intermediating the transaction.

In the Firms' view, a U.S. broker-dealer should not be required to interpose itself in the mechanical process of settling securities transactions effected pursuant to paragraph (a)(3). Interposition of a U.S. broker-dealer in the clearance and settlement process causes a significant duplication of functions by the U.S. and foreign broker-dealer (e.g., maintaining duplicate custody arrangements and bank accounts, and effecting duplicate transfers of funds and securities). This duplication of functions not only is inefficient from a cost perspective, but also increases the risk of operational errors and settlement failure (since twice the number of bookkeeping entries and transfers must occur). Moreover, entities qualifying as "U.S. institutional investors" and "major U.S. institutional investors" frequently elect (and may, in some cases, be required by law) to engage foreign custodians directly to hold, receive and deliver their foreign securities and local currency (including in circumstances where a foreign jurisdiction prohibits U.S. broker-dealers from holding securities or currency for customers). In this context, the current rule appears to provide little benefit to U.S. institutional investors and imposes a significant barrier to efficient settlement of international transactions.

Thus, the Firms request that the staff provide guidance confirming that, in transactions involving foreign securities[5] or U.S. Government securities intermediated by a

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5 For purposes of this request, we use the term "foreign securities" as defined in our previous correspondence relating to Rule 15a-6. See Cleary, Gottlieb, Steen & Hamilton (November 22, 1995, revised January 30, 1996).

U.S. broker-dealer under Rule 15a-6, clearance and settlement may occur through the direct transfer of funds and securities between the U.S. investor and the foreign broker-dealer in situations where the foreign broker-dealer is not acting as custodian of the funds or securities of the U.S. investor.[6] This guidance would confirm that for such transactions in such situations the U.S. investor or its custodian could transfer funds or such securities directly to the foreign broker-dealer or its agent and the foreign broker-dealer or its agent could transfer any funds or such securities directly to the U.S. investor or its custodian. We understand that this guidance would be applicable only in circumstances where (i) the foreign broker-dealer agrees to make available to the intermediating U.S. broker-dealer clearance and settlement information relating to such transfers and (ii) the foreign broker-dealer is not in default on any material financial market transactions.

This interpretive relief would enhance the ability of U.S. investors to enter into securities transactions with foreign broker-dealers without detracting significantly from the Commission's investor protection mandate under the Exchange Act. Although certain mechanical aspects of clearing and settling transactions would not be performed by the U.S. broker-dealer intermediary, U.S. investors would continue to benefit from the other protections provided by Rule 15a-6. In particular, the U.S. broker-dealer would fulfill all of the other enumerated duties under paragraph (a)(3)(iii)(A), including effecting the transactions, issuing required confirmations and maintaining required books and records relating to the transactions.[7]

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6 In general, the difficulties described above relate primarily to transactions in foreign securities and U.S. Government securities and thus the Firms do not, at present, request that the staff address the issues that would be posed more generally by transactions involving U.S. securities, although it may be appropriate to do so in the context of anticipated rulemaking in this area.

7 The inability of a foreign broker-dealer to receive and safeguard securities for customers in transactions effected under Rule 15a-6 presents a hindrance to the effective provision of cross-border securities services to U.S. investors. The laws of several foreign jurisdictions effectively prohibit a U.S. broker-dealer from clearing and settling transactions for its customers in those jurisdictions. In light of the obstacles that local legal, tax and similar restrictions may pose to the ability of a U.S. broker-dealer to provide safekeeping services to U.S. customers investing in a foreign country, we understand that the Commission staff has been and would continue to be willing to provide individual firms with prompt assistance addressing these concerns on a case-by-case basis through the no-action process. See Morgan Stanley India Securities Pvt. Ld. (December 20, 1996).

The requested relief would apply solely to the operational issue of the transfer of funds and securities between a foreign broker-dealer and a U.S. institutional investor or a major U.S. institutional investor (including an entity qualifying pursuant to the relief requested in Part II.A of this letter) in the context of clearance and settlement of transactions in foreign securities or U.S. Government securities between that foreign broker-dealer and that U.S. investor where the foreign broker-dealer is not acting as custodian for the U.S. investor. We understand that the granting of such relief should not be construed to suggest that the staff has made any implicit or explicit determination regarding the permissibility of any particular transaction or custodial arrangement related to such a transfer. In other words, the foreign broker-dealer would continue to be required to ensure that each such transaction and any custodial arrangement qualifies in all other respects for exemption under the Rule, even though the direct transfer of funds and securities would be permitted to occur as described above.

C. Permissible Contacts with U.S. Investors by Foreign Associated Persons of U.S.-Affiliated Foreign Dealers

Paragraph (a)(3) of Rule 15a-6 requires that an associated person of a U.S. broker-dealer intermediary participate in certain communications between foreign associated persons of a foreign broker-dealer and U.S. investors. Specifically, paragraph (a)(3)(iii)(B) requires that an associated person of the U.S. broker-dealer intermediary participate in any oral communications between foreign associated persons and U.S. institutional investors that are not "major U.S. institutional investors," and paragraph (a)(3)(ii)(A)(1) requires participation by an associated person of the U.S. broker-dealer intermediary in connection with visits in the United States by a foreign associated person with both U.S. institutional investors and major U.S. institutional investors.

1. Chaperoning Requirements

The "chaperoning" requirements prescribed by paragraph (a)(3) of Rule 15a-6 have proven awkward to implement in practice, particularly in the context of Asian markets separated from the United States by a large number of time zones. Moreover, "chaperoning" provides only slight policy benefits given the experience and capabilities of the U.S. institutional investors eligible to enter into transactions under paragraph (a)(3) and the other investor protections provided under that exemption, including in particular the requirement that any foreign associated person not be subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act. In addition, the apparent absence of significant abuses in the context of major U.S. institutional investors (for whom "chaperoning" of oral communications generally is not required) since the adoption of Rule 15a-6 further confirms the appropriateness of limiting the scope of the chaperoning requirement for all U.S. institutional investors eligible to have direct contacts with foreign broker-dealers under the Rule.

Accordingly, the Firms request that the staff grant no-action relief that would permit foreign associated persons of a U.S.-Affiliated Foreign Dealer, without the participation of an associated person of an affiliated Firm,[8] to (i) engage in oral communications from outside the United States with U.S. institutional investors where such communications take place outside of the trading hours of the New York Stock Exchange (i.e., at present, 9:30 a.m. to 4:00 p.m. New York Time), so long as the foreign associated persons do not accept orders to effect transactions other than those involving foreign securities (as defined in note 5 above) and, (ii) have in-person contacts during visits to the United States with major U.S. institutional investors (including those investors with which a U.S.-Affiliated Foreign Dealer would be able to enter into transactions pursuant to the relief requested in Part II.A of this letter), so long as the number of days on which such in-person contacts occur does not exceed 30 per year and the foreign associated persons engaged in such in-person contacts do not accept orders while in the United States to effect securities transactions.[9]

2. Electronic Quotation Systems

In the adopting release for Rule 15a-6,[10] the Commission directed a number of comments to the application of the broker-dealer registration requirement to foreign broker-dealers whose quotations are distributed to investors through electronic systems. Specifically, the Adopting Release sets forth the interpretive position that Rule 15a-6 "generally would permit the U.S. distribution of foreign broker-dealers' quotations by third party systems . . . that distributed these quotations primarily in foreign countries," but indicated that this position

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8 We understand that foreign associated persons of the U.S.-Affiliated Foreign Dealers would continue to be able to have "unchaperoned" contacts with U.S. persons at any time if they are "two-hatted" (i.e., also qualified as registered representatives acting on behalf of and under the supervision of an affiliated Firm under U.S. self-regulatory organization guidelines).

9 In addition to the specific relief relating to "chaperoned" contacts described above, the Firms request clarification from the staff that the limitations set forth in paragraph (a)(2)(ii) of Rule 15a-6 would not prohibit a foreign broker-dealer from initiating follow-up contacts with major U.S. institutional investors (including those entities qualifying pursuant to the relief requested in Part II.A of this letter) to which it has furnished research reports, if such follow-up contacts occur in the context of a relationship between a foreign broker-dealer and a U.S. intermediary broker-dealer under the Rule.

10 Release No. 27017 (July 11, 1989), 54 Fed. Reg. 30,013 (July 18, 1989) (the "Adopting Release").

would be available "only to third-party systems that did not allow securities transactions to be executed between the foreign broker-dealer and persons in the U.S. through the systems."[11] In the Firms' view, because third-party quotation services have become increasingly global in scope since the time of the adoption of Rule 15a-6, this distinction between systems that distribute quotations primarily in the U.S. and systems that distribute quotations "primarily in foreign countries" can no longer, in practice, serve as a useful dividing line for achieving the Commission's regulatory objectives.

With respect to proprietary quotation systems, the Adopting Release noted that "direct dissemination of a foreign market maker's quotations to U.S. investors, such as through a private quote system controlled by a foreign broker-dealer" would not be appropriate because the dissemination of such quotations would constitute a direct inducement to trade with that foreign broker-dealer.[12] There is no express indication, however, that the Commission's position in the Adopting Release is intended to preclude a foreign broker-dealer from directly "inducing" U.S. investors to trade with the foreign broker-dealer via a quotation system where the U.S. investor subscribes to the quotation system through a U.S. broker-dealer, the U.S. broker-dealer has continuing access to the quotation system, and the foreign broker-dealer's other contacts with U.S. investors are permissible under Rule 15a-6.

Where a U.S. institutional investor effects transactions through a U.S. broker-dealer intermediary, no customer protection or other policy objective would seem to be served by denying the institutional investor direct electronic access to the quotations of a foreign broker-dealer -- especially since Rule 15a-6 currently provides clear authority for the quotations to be conveyed orally (if inconveniently) through a registered representative associated with the U.S. broker-dealer. In the Firms' view, the availability of improved technologies for providing investors with quotations should not be restricted merely because it is impossible to "chaperone" a data transmission.

Accordingly, the Firms request the staff's advice clarifying that, in light of this technological evolution, the interpretive portions of the Adopting Release requiring operation of quotation systems by third parties that primarily distribute quotations in foreign countries no

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11 The Commission stated, however, that foreign broker-dealers whose quotes were distributed through such systems would not be allowed to initiate contacts with U.S. persons "beyond those exempted under [Rule 15a-6], without registration or further exemptive rulemaking." Adopting Release, 54 Fed. Reg. at 30,018.

12 Adopting Release, 54 Fed. Reg. at 30,019.

longer apply.[13] In this connection, the Firms specifically request confirmation by the staff that providing U.S. investors with access to proprietary and third-party screen-based quotation systems that supply quotations, prices and other trade-reporting information input directly by foreign broker-dealers will not constitute an impermissible "contact" with a foreign broker-dealer, so long as any transactions between the U.S. investor and the foreign broker-dealer are intermediated in accordance with the requirements of Rule 15a-6.[14] In addition, we understand that the staff would be willing to provide individual firms with prompt additional guidance regarding the execution of such intermediated transactions through an automated trading system operated by the registered U.S. broker-dealer intermediary.

III. Conclusion

Based on the foregoing, we request your advice that the staff would not recommend that the Commission take any enforcement action against any of the Firms or any U.S.-Affiliated Foreign Dealer in the event that a U.S.-Affiliated Foreign Dealer engages in the securities activities described in Parts II.A through II.C above without registering as a "broker" or "dealer" under Section 15 of the Exchange Act.

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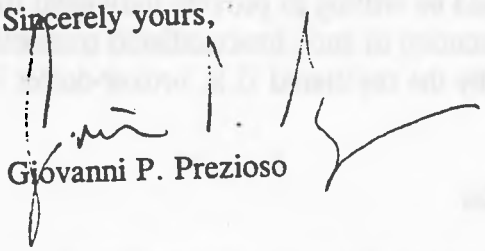
13 In addition to providing the specific clarification requested herein with regard to screen-based information systems, the Firms additionally encourage the Commission to continue its more general evaluation of issues under the Exchange Act and other federal securities laws relating to the impact of emerging technologies on the U.S. regulatory regime, including issues relating to electronic trading systems.

14 We recognize in this connection, however, that a foreign broker-dealer that directs quotations to U.S. investors through a proprietary system (as distinct from a third-party system) would be viewed as having "solicited" any resulting transactions (and thus could not rely on the exemption in paragraph (a)(1) of Rule 15a-6), although it would continue to be allowed to effect transactions in reliance on other available provisions of the Rule.

We would appreciate consideration of these matters as promptly as practicable. If for any reason the staff is not disposed to grant the requested no-action relief, we would also appreciate an opportunity to discuss the situation with the staff prior to the issuance of any formal letters. Questions regarding this no-action request should be directed to the undersigned (at 202-728-2758).

Sincerely yours,



Giovanni P. Prezioso

cc: Mr. Robert L.D. Colby
Deputy Director
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