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June 15, 2007

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1000
Attn: Ms. Nancy M. Morris, Secretary

Via Electronic Mail

Re: File Number S7-08-07 Amendments to Financial Responsibility Rules for Broker-Dealers

Ladies and Gentlemen:

Dresdner Kleinwort[1] appreciates this opportunity to comment on the proposed amendments to the financial responsibility rules for broker-dealers, chiefly Rule 15c3-1, Rule 15c3-3 (the "customer protection rule") and related reporting, books and records provisions under the Securities Exchange Act of 1934 (the "Exchange Act"), recently proposed by the Securities and Exchange Commission (the "Commission").[2] Dresdner Kleinwort supports the Commission's goal of reviewing and updating the financial responsibility rules. However, we believe that several aspects of the proposal would create operational and compliance difficulties for broker-dealers and, as a result, unnecessarily disrupt such broker-dealers' longstanding relationships and business practices. As described in more detail in this letter, we accordingly suggest modifications to the text, and request a number of clarifications of the Commission's interpretation, of the proposed amendments.

I. Proprietary Accounts of Broker-Dealers ("PAB Accounts")

While Dresdner Kleinwort acknowledges the gap between the definition of customer under the Securities Investor Protection Act of 1970 ("SIPA") and the customer protection rule, we respectfully disagree with amending the customer protection rule to resolve the disparity because it would create a new and administratively cumbersome reserve formula calculation for PAB accounts. We respectfully recommend that the Commission's efforts should instead be focused on amending the definition of customer under SIPA[3] to better track the exclusions currently available under the customer protection rule.[4] Broker-dealers and banks acting as

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1 Dresdner Kleinwort is the trade name of the investment banking and capital markets business of Dresdner Bank AG. In the United States, this business is conducted through, among other U.S. entities, Dresdner Kleinwort Securities LLC, which is a registered broker-dealer that is a wholly owned subsidiary of Dresdner Bank AG and a member organization of the New York Stock Exchange ("NYSE").

2 Exchange Act Rel. No. 55,431 (March 8, 2007), 72 Fed. Reg. 12,862 (March 19, 2007) ("Proposing Release").

3 *See* 15 U.S.C. 78*lll*(2).

4 In relevant part, Rule 15c3-3(a)(1) excludes the following persons from its definition of customer:

brokers or dealers should not require the protections of a safety net because such traditional non-customers are better positioned to understand the insolvency risk of the broker-dealers at which they maintain proprietary accounts and, thus, are able to address such risk without the protection of the Securities Investor Protection Corporation ("SIPC"). Non-traditional customers often self-insure or otherwise account for such exposure regardless of their status under SIPA.

In the alternative, the SEC should consider permitting these traditional non-customers to opt out or elect not to be covered by the new PAB account definition and, by extension, SIPC coverage.[5] This opt out would be particularly useful in situations where a broker-dealer carries accounts of affiliated broker-dealers and banks. Dresdner Kleinwort also strongly believes that additional accounts of other non-customers under the customer protection rule (*e.g.*, general partners and subordinated lenders) should not be included in the PAB computation before the above alternatives are explored and/or the Commission takes time to analyze the impact on broker-dealers of the pending proposal.

If the Commission ultimately decides to adopt the proposed amendments to the customer protection rule creating a new reserve formula computation for PAB accounts, Dresdner Kleinwort asks the Commission to reconsider whether the reserve formula must be computed, and reserve accounts maintained, separately for traditional customers on the one hand and PAB accounts on the other. This parallel structure seems unnecessarily duplicative. If the Commission nevertheless ultimately decides to adopt the proposed PAB account amendments, we request a transition period of at least 12 months after the effective date of such amendments to allow firms comprehensively to address existing relationships with (i) U.S. broker-dealers not previously structured in accordance with the so-called PAIB no-action letter,[6] (ii) foreign broker-dealers and (iii) foreign banks. In this regard, we ask that the Commission consider the scope of "non-customer" relationships today. In addition to introducing broker-dealers, who are expressly excluded from the customer protection rule, the NYSE has allowed many firms to "unlock" other accounts (*i.e.*, treat accounts of non-broker-dealers as otherwise falling outside the definition of customer). For example, under existing NYSE guidance,[7] a number of firms have received permission to treat accounts through which foreign banks trade on a proprietary basis as non-customer accounts.[8] Accordingly, firms will require a transition period to account for all such

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> a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer ... [and] a general partner or director or principal officer of the broker or dealer or any other person to the extent that person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer....

[5] Indeed, customers today may effectively opt out of the customer protection rule by agreeing to subordinate their claims against their respective broker-dealers to the claims of other creditors of such broker-dealers.

[6] *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD Regulation, Inc. (Nov. 10, 1998).

[7] *See* Rule 15c3-3(a)(1) /032 in the NYSE Interpretation Handbook

[8] Although not clearly expressed by the NYSE, the policy rationale for excluding foreign banks may be that these entities are often not provided with "retail customer" protections in their respective home jurisdictions. As

traditional non-customer relationships and to incorporate those relationships into the systems utilized by the firms to make reserve formula computations.

II. Reserve Deposit Limitations

Dresdner Kleinwort believes that the proposed amendments to the reserve formula computation provisions in the customer protection rule excluding cash deposits at affiliated banks and limiting the amount of cash deposits at any one nonaffiliated bank are unwarranted. Moreover, the distinction between affiliated and nonaffiliated banks in this context is not sufficiently supported by the Proposing Release. Assuming for the sake of argument that the Commission's stated concerns about concentration risk with reserve deposits is not overstated,[9] Dresdner Kleinwort sees no reason why affiliated banks should be viewed less favorably than nonaffiliated banks for the purpose of maintaining cash reserve deposits. The bare statement that a broker-dealer "may not exercise due diligence with the same degree of impartiality when assessing the soundness of an affiliate bank as it would with a non-affiliate..." does not suffice to justify the disparate treatment.[10] It is just as easy to argue that broker-dealers are in a much better position to know about the soundness of an affiliated bank than to learn about the soundness of a nonaffiliated bank, which may not be willing to provide complete and accurate information. As a practical matter, this would drive broker-dealers to no longer maintain deposits with affiliated banks.

In any event, all banks (as defined under Section 3(a)(6) of the Exchange Act) are subject to safety and soundness requirements of their respective functional regulators (*e.g.*, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, etc.). As such, these banks, regardless of affiliations, are subject to a regulatory framework intended to minimize the possibility of insolvency, and the Commission provides no economic analysis to support the assertion that affiliated banks of broker-dealers are more prone to insolvency than unaffiliated banks. Indeed, the perceived benefit of effectively steering broker-dealers' reserves to nonaffiliated banks will likely result in higher costs – *i.e.*, from the very process of establishing accounts at nonaffiliates – that will ultimately be passed on to customers. Moreover, customer funds (and the additional PAB account funds) may be more at risk from the complexity imposed on broker-dealers compelled by these changes to maintain multiple reserve accounts, many of which would now be with nonaffiliates with whom broker-dealers have not previously dealt, than from the risk of insolvency at one bank, regardless of affiliation, holding a high concentration of customer funds in a reserve account.

III. Agency Lending Activities

Dresdner Kleinwort also requests clarifications of two matters with respect to the securities lending proposals. First, the Commission should make clear that the reporting

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such, these non-customers are accustomed to accounting for the risk of maintaining securities positions with third parties absent a regulatory safety net.

9 Proposing Release at 12,864.

10 *Id.*

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provision in proposed Exchange Act Rule 17a-11(c)(5) is triggered only by principal lending activity meeting or exceeding the stated thresholds. In other words, agency lending activities that do not expose the capital of the intermediated broker to risk should not be included in calculating whether a firm's overall activities trigger the new reporting requirement. Second, we ask that the Commission note in the adopting release that agency status may be established by a firm for these purposes for all customary lending relationships where a firm is not acting as principal, including those where a U.S. registered broker intermediates on behalf of a foreign broker-dealer pursuant to the conditions of Exchange Act Rule 15a-6.

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Again, Dresdner Kleinwort appreciates the opportunity to comment on this subject and would be pleased to discuss any of the points raised in this letter in more detail. Should you have any questions, please contact either of the undersigned officers of Dresdner Kleinwort Securities LLC at 212-969-2700.

Sincerely,

Christopher Williams
Director & Senior Counsel

Barbara Brooks
Principal Financial Officer