



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

November 28, 2012

Grace B. Vogel
Executive Vice President, Member Regulation
Financial Industry Regulatory Authority, Inc.
One World Financial Center
200 Liberty Street, 9th Floor
New York, NY 10281-1003

Re: Definition of "Ready Market" with regard to Foreign Equity Securities pursuant to Rule 15c3-1(c)(11)(i)

Dear Ms. Vogel:

In your letter dated November 6, 2012, on behalf of the Financial Industry Regulatory Authority, Inc. ("FINRA"), you request assurance that the staff of the Division of Trading and Markets ("Division") would not recommend enforcement action to the Securities and Exchange Commission ("Commission" or "SEC") under Rule 15c3-1 ("Rule") of the Securities Exchange Act of 1934 ("Exchange Act"), if broker-dealers, under the conditions described below, treat certain foreign equity securities as having a "ready market" under Rule 15c3-1(c)(11)(i) and subject to the haircuts under paragraph (c)(2)(vi)(J).¹ You note that this would expand the number of foreign securities eligible as foreign margin stock under the Board of Governors of the Federal Reserve System's ("Federal Reserve") Regulation T.²

Paragraph (c)(2)(vii) of the Rule requires a broker-dealer to deduct 100% of the carrying value of securities it holds in its proprietary account for which there is no ready market, as defined in paragraph (c)(11), or which cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions.³ Paragraph (c)(11)(i) of the Rule states that the term "ready market" shall include "a market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost

¹ 17 CFR 240.15c3-1(c)(11).

² Federal Reserve Regulation T (12 CFR 220.2) defines a foreign margin stock as a "foreign security that is an equity security that: (1) Appears on the Board's periodically published List of Foreign Margin Stocks; or (2) is deemed to have a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3-1) or a "no-action" position issued thereunder."

³ 17 CFR 240.15c3-1(c)(2)(vii).

instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.”

Currently, under the Rule, broker-dealers may treat equity securities of a foreign issuer that are listed on the FTSE World Index as having a “ready market,” and subject to the haircuts specified under paragraph (c)(2)(vi)(J) of the Rule.⁴ Because the FTSE World Index is currently limited to approximately 2,300 securities, you state that FINRA member firms have expressed an interest in expanding the criteria for recognizing foreign equity securities as having a ready market under the Rule to include more than those that are listed on the FTSE World Index. As explained in your letter, FINRA member firms contend that there are many more issuers of a substantial size for which there is a ready market within the meaning of the Rule.

Based on the foregoing, the Division will not recommend enforcement action to the Commission if a broker-dealer treats an equity security of a foreign issuer as having a ready market under Rule 15c3-1(c)(11) and subject to the haircuts under paragraph (c)(2)(vi)(J), if the following conditions are met:

1. The security is listed for trading on a foreign securities exchange located within a country that is recognized on the FTSE World Index, where the security has been trading on that exchange for at least the previous 90 days;
2. Daily quotations for both bid and ask or last sale prices for the security provided by the foreign securities exchange on which the security is traded are continuously available to broker-dealers in the United States, through an electronic quotation system;
3. The median daily trading volume (calculated over the preceding 20 business day period) of the foreign equity security on the foreign securities exchange on which the security is traded is either at least 100,000 shares or \$500,000;⁵ and
4. The aggregate unrestricted market capitalization in shares of such security exceeds \$500 million over each of the preceding 10 business days.

Any foreign equity security that ceases to meet one or more of the eligibility requirements will continue to be considered to have a “ready market” for purposes of Rule 15c3-1(c)(11) for 5 business days from the date such foreign equity security ceases to meet the requirements. After

⁴ Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Dominic A. Carone, Chairman, Capital Committee, Securities Industry Association (Aug. 13, 1993) (“1993 Letter”). The staff notes that the terms and conditions of the 1993 Letter with respect to foreign equity securities listed on the FTSE World Index will continue to apply following the issuance of this no-action letter. See also *FINRA Interpretations of Financial and Operational Rules* -- Rule 15c3-1(c)(11)(i)/02 available at <http://www.finra.org/Industry/Regulation/Guidance/FOR/index.htm>.

⁵ The shares purchased by the computing broker-dealer during the preceding 20 business day period are to be excluded when determining the median trading volume.

the end of this 5 business day period, the security will be considered to have a "ready market" only if and when it again meets all of the eligibility requirements.

A broker-dealer may utilize the provisions of paragraph (c)(2)(vi)(J) of Rule 15c3-1 to calculate the haircuts for foreign equity securities that meet the conditions of this letter; however, a broker-dealer should perform this calculation independent of the broker-dealer's haircut calculation for other securities subject to the provisions of paragraph (c)(2)(vi)(J).⁶

Broker-dealers that choose to utilize this relief would need to demonstrate, upon examination or inquiry, that any such foreign equity security that is used as collateral for a margin loan met all of the above criteria, and make and keep current, and maintain all relevant records in accordance with Rules 17a-3 and 17a-4.

You note that FINRA also expects that broker-dealers relying on this letter will maintain appropriate risk management systems to monitor for concentrations, volatility, and liquidity when extending credit secured by foreign securities. Broker-dealers could consider imposing higher "house" maintenance requirements as warranted. Measurements for computing such exposure should be reviewed at the individual account level, as well as, across all accounts held at the broker-dealer.

Finally, the Division notes that pursuant to the Rule, if markets can absorb only a limited number of shares of an equity security for which a ready market exists, the non-marketable portion in the proprietary or other accounts of a broker-dealer is subject to a 100% deduction to net capital and is treated as a non-allowable asset consistent with current interpretations.⁷

⁶ A broker-dealer may combine foreign equity securities listed on the FTSE World Index under the conditions of the 1993 Letter and those foreign equity securities meeting the conditions of this no-action letter for purposes of calculating the haircuts specified under paragraph (c)(2)(vi)(J) of the Rule.

⁷ See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Edward Kwalwasser, Senior Vice President, New York Stock Exchange, and Thomas R. Casella, Vice President, National Association of Securities Dealers (Oct. 5, 1987) ("1987 Letter"). In the 1987 Letter, the Commission issued relief to a broker-dealer if, when faced with a blockage in securities, it treats as readily marketable securities that portion of the block which equals the aggregate of the most recent four week, inter-dealer trading volume. The number of shares exceeding this amount should be considered non-marketable and subject to a 100% deduction from net capital and is treated as a non-allowable asset, unless the broker-dealer demonstrates to the satisfaction of its Designated Examining Authority that a ready market exists for these excess shares. The shares purchased by the computing broker-dealer during the most recent four-week period are to be excluded when determining trading volume. See also Rule 15c3-1(c)(2)(vii)/01 in FINRA's *Interpretations of Financial and Operational Rules*.

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You should understand that this is a staff position with respect to enforcement only and does not purport to state any legal conclusion on this matter. Any material change in circumstances may warrant a different conclusion and should be brought immediately to the Division's attention. Furthermore, this position may be withdrawn or modified if the staff determines that such action is necessary in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the securities law.

Sincerely,



Michael A. Macchiaroli
Associate Director

November 6, 2012

Mr. Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Definition of "Ready Market" with regard to Foreign Securities pursuant to Rule 15c3-1(c)(11)(i)

Dear Mr. Macchiaroli:

The Financial Industry Regulatory Authority, Inc. ("FINRA") is hereby requesting assurance that the staff of the Division of Trading and Markets ("Division") of the Securities and Exchange Commission ("SEC" or "Commission") would not recommend enforcement action under Rule 15c3-1 of the Securities Exchange Act of 1934 ("Exchange Act"), if broker-dealers, under the conditions described below, treat certain foreign equity securities as having a "ready market" under Exchange Act Rule 15c3-1(c)(11) and subject to the haircuts under paragraph (c)(2)(vi)(J).¹ FINRA notes this would expand the number of foreign securities eligible as foreign margin stock under the Board of Governors of the Federal Reserve System's ("Federal Reserve") Regulation T.²

Paragraph (c)(2)(vii) of Exchange Act Rule 15c3-1 requires a broker-dealer to deduct 100% of the carrying value of securities it holds in its proprietary account for which there is no ready market, as defined in paragraph (c)(11), or which cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions.³ Paragraph (c)(11)(i) of Exchange Act Rule 15c3-1 states that the term "ready market" shall include "a market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations

¹ 17 CFR 240.15c3-1(c)(11).

² Federal Reserve Regulation T (12 CFR 220.2) defines a foreign margin stock as a, "foreign security that is an equity security that: (1) Appears on the Board's periodically published List of Foreign Margin Stocks; or (2) is deemed to have a "ready market" under SEC Rule 15c3-1 (17 CFR 240.15c3-1) or a "no-action" position issued thereunder."

³ 17 CFR 240.15c3-1(c)(2)(vii).

can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.”

Currently, under Exchange Act Rule 15c3-1, broker-dealers may treat equity securities of a foreign issuer that are listed on the FTSE World Index as having a “ready market,” and subject to the haircuts specified under paragraph (c)(2)(vi)(J).⁴ As the FTSE World Index is currently limited to approximately 2,300 securities, of which a large percentage are issued in the United States, FINRA member firms have expressed an interest in expanding the criteria for recognizing foreign equity securities, beyond the FTSE World Index, as having a ready market under Exchange Act Rule 15c3-1. They contend that there are many more issuers of a substantial size for which there are liquid markets.

We, therefore, request that the Division not recommend enforcement action to the Commission if a broker-dealer treats a foreign equity security as having a ready market under Exchange Act Rule 15c3-1(c)(11) and subject to the haircuts under paragraph (c)(2)(vi)(J), if, it meets the following conditions:

- Equity securities of a foreign issuer that are listed for trading on a foreign securities exchange located within those countries that are recognized on the FTSE World Index, and have been trading on such exchange or market for at least the previous 90 days; and
- Daily quotations for both bid and ask or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States, pursuant to an electronic quotation system; and
- The aggregate unrestricted market capitalization in shares of such foreign equity security exceeds \$500 million over each of the preceding 10 business days; and
- The median daily trading volume (calculated over the preceding 20 business day period) of such foreign equity security on the foreign securities exchange on which the security is traded, is either at least 100,000 shares or \$500,000.

We understand that the market capitalization of an issuer will fluctuate based upon market events. The burden of moving a security from the marketable to nonmarketable category can be disruptive. Therefore, we ask the Commission to recognize any foreign equity security that previously met all of the above criteria for the determination of having a ready market, but later ceases to meet one or more of the eligibility requirements, to continue to be considered to have a “ready market” for purposes of Rule 15c3-1(c)(11) for 5 business days from the date such

⁴ Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission to Dominic A. Carone, Chairman, Capital Committee, Securities Industry Association (Aug. 13, 1993) (“1993 Letter”). *see also* FINRA Interpretation of Rule 15c3-1(c)(11)(i)/02 available at <http://www.finra.org/Industry/Regulation/Guidance/FOR/index.htm>.

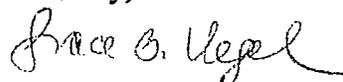
foreign equity security ceases to meet the requirements. After the end of this 5 business day period, the security will be considered to have a "ready market" only if and when it again meets all of the eligibility requirements. Likewise, any foreign equity security, that is recognized to have a "ready market" for purposes of Exchange Act Rule 15c3-1(c)(11), would also be considered to be eligible for margin purposes.

Broker-dealers that choose to utilize this relief would need to demonstrate to FINRA, upon examination or inquiry, that any such foreign equity security which is used as collateral for a margin loan, did in fact meet all of the above criteria during such time period. FINRA would expect that all relevant records of such be maintained by the broker-dealer in accordance with Exchange Act Rules 17a-3 and 17a-4.

FINRA would also expect that firms will have in place appropriate risk management systems to monitor for concentrations, volatility, and liquidity when extending credit secured by foreign securities. Firms should consider imposing higher "house" maintenance requirements as warranted. Measurements for computing such exposure should be reviewed at the individual account level as well as across all accounts held at the broker-dealer.

Finally, we note that pursuant to Exchange Act Rule 15c3-1, if markets can absorb only a limited number of shares of an equity security for which a ready market exists ("marketplace blockage"), the non-marketable portion in the proprietary or other accounts of a broker-dealer is subject to a 100% deduction to net capital, and is treated as a non-allowable asset.⁵

Sincerely,



cc: Thomas McGowan
Sheila Schwartz

⁵ See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, Commission to Edward Kwalwasser, Senior Vice President, New York Stock Exchange, and Thomas R. Casella, Vice President, National Association of Securities Dealers (Oct. 5, 1987) ("1987 Letter"). Exchange Act Rule 15c3-1(c)(2)(vii)/01. In the 1987 Letter, the Commission issued relief to a broker-dealer if, when faced with a blockage in securities, it treats as readily marketable securities that portion of the block which equals the aggregate of the most recent four week, inter-dealer trading volume. The number of shares exceeding this amount should be considered non-marketable and subject to a 100% deduction from net capital, and is treated as a non-allowable asset, unless the broker-dealer can demonstrate to its Designated Examining Authority that a ready market exists for these excess shares. The shares purchased by the computing broker-dealer during the most recent four-week period are to be excluded when determining trading volume. See also FINRA Interpretation of Rule 15c3-1(c)(2)(vii)/01.