



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

February 26, 2014

Ms. Kris Dailey  
Vice President, Risk Oversight & Operational Regulation  
FINRA  
One World Financial Center  
200 Liberty Street  
New York, NY 10281

Re: Broker-Dealers Holding Cash in a Reserve Account at a  
Non-Affiliated U.S. Branch of a Foreign Bank under Rule 15c3-3

Dear Ms. Dailey:

On July 30, 2013, the Securities and Exchange Commission (“Commission”) adopted amendments to the broker-dealer financial responsibility rules under the Securities Exchange Act of 1934.<sup>1</sup> The amendments include the adoption of new paragraph (e)(5) to Rule 15c3-3 which places limitations on banks where a broker-dealer can deposit cash to meet its customer or PAB account reserve requirements under paragraph (e) of Rule 15c3-3.<sup>2</sup> More specifically, paragraph (e)(5) of Rule 15c3-3 excludes the following arrangements for purposes of determining whether a broker-dealer maintains the minimum deposits required under Rule 15c3-3: (1) cash deposited with an affiliated bank; and (2) cash deposited with a non-affiliated bank to the extent that the amount of the deposit exceeds 15% of the bank’s equity capital, as reported by the bank in its most recent Call Report. The final rules became effective on October 21, 2013. The Commission, however, issued an exemptive order providing broker-dealers a temporary exemption from the requirements of certain of the amendments, including paragraph (e)(5) of Rule 15c3-3, until March 3, 2014.<sup>3</sup>

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<sup>1</sup> See Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824 (Aug. 21, 2013).

<sup>2</sup> 17 CFR 240.15c3-3(e)(5). The final rules define the term PAB account to mean “a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer) other than a delivery-versus-payment account or a receipt-versus-payment account.” The term also excludes accounts that have been subordinated to the claims of creditors of the carrying broker or dealer. 17 CFR 240.15c3-3(a)(16).

<sup>3</sup> Order Providing Broker-Dealers a Temporary Exemption from the Requirements of Certain New Amendments to the Financial Responsibility Rules for Broker-Dealers under the Securities

In response to the proposing release, some commenters expressed concern about the requirement to use a Call Report to determine a bank's equity capital under paragraph (e)(5) of Rule 15c3-3. These commenters stated that, because there is no equity capital line item in Call Reports filed by U.S. branches of foreign banks (because such branches are not separately incorporated legal entities), the Call Report provision in the rule would potentially prohibit a broker-dealer from utilizing a U.S. branch of a foreign bank to hold deposits of cash to meet its reserve requirements.<sup>4</sup> In adopting the final rule, however, the Commission retained the requirement that a bank's equity be determined using its most recent Call Report but stated it will consider requests for exemptive relief from broker-dealers that wish to hold cash in a reserve account at a U.S. branch of a foreign bank.<sup>5</sup>

Subsequent to the publication of the adopting release, the Commission has received exemptive requests from certain foreign banks on behalf of broker-dealers that currently maintain reserve accounts at the foreign bank's U.S. branch.<sup>6</sup> The Commission is currently reviewing and evaluating the exemptive requests. In order to provide time to consider the issues presented, and to prevent potential dislocations that would be associated with moving cash held in reserve accounts at U.S. branches of foreign banks prior to Commission action on such requests, the staff of the Division of Trading and Markets ("Division") will not recommend enforcement action to the Commission if a broker-dealer includes cash held in a reserve account at a non-affiliated U.S. branch of a foreign bank in determining whether it maintains the minimum deposits required under paragraph (e) of Rule 15c3-3, provided the following conditions are satisfied:

1. The foreign bank has an exemptive request pending with the Commission on or before March 3, 2014 with respect to its U.S. branch; and
2. The broker-dealer uses the foreign bank's equity capital, as reported in the foreign bank's most recent financial statements, in lieu of a Call Report, to calculate the 15% bank equity capital threshold under paragraph (e)(5) of Rule 15c3-3, on or after March 3, 2014.

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Exchange Act of 1934, Exchange Act Release No. 70701 (Oct. 17, 2013), 78 FR 62930 (Oct. 22, 2013).

<sup>4</sup> In the adopting release, the Commission recognized that the U.S. branches of some foreign banks may meet the definition of bank under section 3(a)(6) of the Exchange Act and, therefore, also under paragraph (a)(7) of Rule 15c3-3. See Financial Responsibility Rules for Broker-Dealers, 78 FR at 51834.

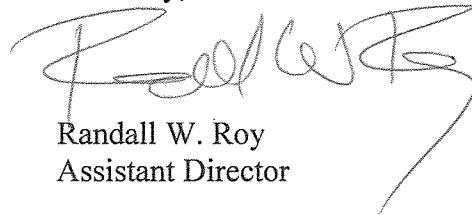
<sup>5</sup> See Financial Responsibility Rules for Broker-Dealers, 78 FR at 51834-5.

<sup>6</sup> Commission staff informally advised certain foreign banks (in response to their inquiries) that the staff would review exemptive requests submitted by foreign banks on behalf of broker-dealers that maintain, or will maintain, cash in a reserve account at the foreign bank's U.S. branch. Broker-dealers maintaining cash deposits at a U.S. branch of a foreign bank in order to meet the minimum deposits required under paragraph (e) of Rule 15c3-3 should contact the U.S. branch to confirm whether the foreign bank has submitted an exemptive request to the Commission.

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These conditions are intended solely for the purpose of this temporary no-action relief and the issuance of this letter does not prejudice the Commission's ability to require additional and different conditions with respect to any currently pending exemptive request. The position expressed herein: (1) does not constitute either temporary or final approval by the Commission or the Division of any pending exemptive request; (2) should not be construed as a preliminary view of the Commission or Division with respect to the final disposition of any pending exemptive request; and (3) is effective until such time as the Commission takes action with respect to any such currently pending exemptive request. This letter expresses 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 attention of the Division. 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 laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall W. Roy", is written over the typed name. The signature is stylized and cursive.

Randall W. Roy  
Assistant Director