



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 19, 2016

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

Re: Treatment under Rule 15c3-1 of Margin Posted by Broker-Dealers with Respect to Swaps

Dear Ms. Dailey:

You have informally asked, on behalf of FINRA's broker-dealer members, how collateral posted as margin under the rules of derivative clearing organizations ("DCOs") with respect to cleared swaps and the rules of the prudential regulators¹ and the Commodity Futures Trading Commission ("CFTC") with respect to non-cleared swaps must be treated under the Commission's net capital rule, Rule 15c3-1 under the Securities Exchange Act of 1934 ("Exchange Act").²

Paragraph (c)(2)(iv) of Rule 15c3-1 requires a broker-dealer to deduct from net worth, when computing net capital, assets not readily convertible into cash.³ Paragraphs (c)(2)(iv)(A) through (H) of Rule 15c3-1 set forth a non-exhaustive list of assets that are not readily convertible into cash and, therefore, must be deducted as well as certain assets that need not be

¹ The term "prudential regulator" is defined in section 1(a)(39) of the Commodity Exchange Act (7 U.S.C. 1(a)(39)), which is incorporated by reference in section 3(a)(74) of the Exchange Act (15 U.S.C. 78c(a)(74)). The prudential regulators are the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency. The prudential regulator of a swap dealer or major swap participant is the regulator that directly supervises it.

² 17 CFR 240.15c3-1.

³ See 17 CFR 240.15c3-1(c)(2)(iv).

deducted.⁴ The assets identified in paragraph (c)(2)(iv)(E) of Rule 15c3-1 include “[a]ll other unsecured receivables” not identified in paragraphs (c)(2)(iv)(A) through (D) of the rule.⁵

DCOs that clear swaps require their members to post margin on a daily basis to cover the swaps cleared by their members. Further, the prudential regulators and the CFTC have adopted margin rules that require swap dealers to post margin to, and collect margin from, counterparties to non-cleared swaps.⁶ Under these rules, the initial margin posted by a counterparty must be held at a third-party custodian.

With respect to margin collateral posted to a DCO for a cleared swap, the staff of the Division of Trading and Markets (“staff”) will not recommend enforcement action to the Securities and Exchange Commission (“Commission”) if a broker-dealer does not deduct the value of the collateral from net worth when computing net capital.

With respect to margin collateral posted to a swap dealer or other counterparty for a non-cleared swap, the broker-dealer must deduct the value of the collateral as a non-allowable asset under paragraph (c)(2)(iv)(E) of Exchange Act Rule 15c3-1. This deduction must be made irrespective of whether the margin collateral is held by a third-party custodian or by the swap dealer or other counterparty. However, with respect to initial margin collateral posted to a swap dealer or other counterparty (whether held by a third-party custodian or the swap dealer or other counterparty), the staff will not recommend enforcement action to the Commission if the broker-dealer does not deduct the value of the collateral, provided:

1. The initial margin requirement is funded by a fully executed written loan agreement with an affiliate of the broker-dealer;
2. The loan agreement provides that the lender waives re-payment of the loan until the initial margin is returned to the broker-dealer; and
3. The broker-dealer’s liability to the lender can be fully satisfied by delivering the collateral serving as initial margin to the lender.

This staff position is based strictly on the facts discussed in this letter, and any different facts and circumstances may require a different response. This response, furthermore, expresses the staff position regarding enforcement action only and does not purport to express any legal

⁴ See 17 CFR 240.15c3-1(c)(2)(iv)(A) through (H).

⁵ See 17 CFR 240.15c3-1(c)(2)(iv)(E).

⁶ See Margin and Capital Requirements for Covered Swap Entities; Final Rule, 80 FR 74840 (Nov. 30, 2015) (prudential regulators); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) (CFTC).

conclusions on the question presented. The Staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation as necessary or appropriate for the public interest or the protection of investors.

If you have any questions regarding this letter, please call me at (202) 551-5525, Tom McGowan at (202) 551-5521, or Randall Roy at (202) 551-5522.

Sincerely,

A handwritten signature in black ink, appearing to read "M. A. Macchiaroli", with a long horizontal flourish extending to the right.

Michael A. Macchiaroli
Associate Director