



DIVISION OF  
TRADING AND MARKETS

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

August 18, 2022

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

Re: Letter dated July 27, 2000 from Michael A. Macchiaroli to Charles F. Vadala (Regarding Marketability of Certain Securities)

Dear Ms. Dailey,

On July 27, 2000, the staff of the Division of Trading and Markets (“Division staff”) issued a no-action letter to the Securities Industry Association (“SIA”) concerning the marketability of certain securities (the “Marketability of Certain Securities Letter”).<sup>1</sup> Under the circumstances set forth in the letter, the Division staff stated it would not recommend enforcement action to the Securities and Exchange Commission (“Commission”) if a broker-dealer treats debt securities and preferred stock not rated in one of the four highest categories by at least two nationally recognized statistical ratings organizations (“NRSROs”) as having a ready market<sup>2</sup> for purposes of Rule 15c3-1 under the Securities Exchange Act of 1934 (“Exchange Act”).

<sup>1</sup> See letter dated July 27, 2000 from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to Charles F. Vadala, Chairman, Capital Committee, Securities Industry Association (regarding marketability of certain securities).

<sup>2</sup> The term “ready market” is defined in paragraph (c)(11) of Rule 15c3-1 to include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last price or current bona fide competitive bid and offer quotations 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. 17 CFR 240.15c3-1(c)(11). Broker-dealers are required, pursuant to paragraph (c)(2)(vii) of Rule 15c3-1, to deduct from their net worth 100 percent of the carrying value in the case of securities in their proprietary or other accounts of the broker-dealer, for which there is no

Your staff has inquired about the application of the first numbered paragraph provided in the Marketability of Certain Securities Letter, which reads substantially as follows:

1. The securities:
  - (a) Are issued by an issuer with outstanding non-preferred equity securities that are registered with the Commission and traded on a national securities exchange or NASDAQ;
  - (b) Are issued by an issuer whose equity securities are included in the FTSE World Index;
  - (c) Have current non-investment grade ratings from at least two NRSROs; or
  - (d) Have one investment grade rating by one NRSRO, and the issuer has other outstanding non-preferred equity securities that are registered with the Commission and traded on a national securities exchange, NASDAQ or are included in the FTSE World Index.

Specifically, your staff has reported that certain broker-dealers are treating debt securities and preferred stock that meet the terms of any one of items (a) through (d) as falling within the first numbered paragraph provided in the Marketability of Certain Securities Letter because of the use of the word “or” after subparagraph (c). In particular, your staff states that some broker-dealers interpret the letter to apply to securities with no NRSRO rating by relying on the terms of item (a) or item (b) in the first numbered paragraph alone without consideration of item (c) or (d) or the background underlying the letter. You ask whether the staff’s position applies where a security does not have non-investment grade ratings from at least two NRSROs or one investment grade rating by one NRSRO.

In response to your inquiry, the Division staff is clarifying the original intent of the Marketability of Certain Securities Letter. In order for a broker-dealer’s securities to fall within the circumstances described in the Marketability of Certain Securities Letter, the securities must have, among other things, either current non-investment grade ratings from at least two NRSROs or a current investment grade rating from one NRSRO. For example, the Marketability of Certain Securities Letter references the SIA’s request concerning “the treatment of below-investment-grade-rated and single-rated debt securities and preferred stock for purposes of calculating net capital.” The letter also stated that “there exist questions as to whether below-investment-grade-rated or single-rated debt securities and preferred stock are subject to a 100% haircut under Rule 15c3-1” since the SIA believed “these securities have liquidity sufficient to allow them to be

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ready market, as defined in paragraph (c)(11), and where the securities cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions. 17 CFR 240.15c3-1(c)(2)(vii).

easily sold and that a possible 100% haircut is unjustified.” Importantly, the Marketability of Certain Securities Letter did not refer to unrated securities in the discussion leading up to the no-action statement, or in the no-action statement itself. Moreover, the Marketability of Certain Securities Letter did not address any requests concerning the ready market of unrated debt securities and preferred stock.

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Therefore, in response to your inquiry, the Division staff is clarifying that it will not recommend enforcement action to the Commission if a broker-dealer treats debt securities and preferred stock not rated in one of the four highest categories by at least two NRSROs as having a ready market for purposes of Rule 15c3-1 under the following circumstances:

1. The securities:
  - (a) Have current non-investment grade ratings from at least two NRSROs, and are issued by an issuer with outstanding non-preferred equity securities that are registered with the Commission and traded on a national securities exchange;<sup>3</sup> or
  - (b) Have current non-investment grade ratings from at least two NRSROs, and are issued by an issuer whose equity securities are included in the FTSE World Index; or
  - (c) Have a current investment grade rating from one NRSRO, and are issued by an issuer with outstanding non-preferred equity securities that are registered with the Commission and traded on a national securities exchange; or
  - (d) Have a current investment grade rating from one NRSRO, and are issued by an issuer whose equity securities are included in the FTSE World Index; and
2. The issuer is not in default with respect to the securities and the securities are not traded flat or in default;<sup>4</sup> and
3. The broker-dealer deducts from its net worth the following percentages from the greater of the gross long or gross short market value of positions in debt

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<sup>3</sup> NASDAQ and national securities exchanges are not referred to separately, because since the issuance of the Marketability of Certain Securities Letter, NASDAQ has registered as a national securities exchange.

<sup>4</sup> Paragraph number 2 remains unchanged from the Marketability of Certain Securities Letter.

securities and preferred stock not rated in one of the four highest categories by at least two NRSROs in each of the categories specified below:<sup>5</sup>

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|---|------|
| (a) An initial issuance of at least \$100 million   | 15%  |
| (b) An initial issuance of at least \$75 million and less than \$100 million  | 20%  |
| (c) An initial issuance of at least \$50 million and less than \$75 million   | 25%  |
| (d) An initial issuance of at least \$20 million and less than \$50 million   | 50%  |
| (e) An initial issuance of less than \$20 million <sup>6</sup> or have been held in inventory for more than 90 days as the result of the failure to complete the underwriting | 100% |

4. The broker-dealer does not include the value of debt securities and preferred stock not rated in one of the four highest categories by at least two NRSROs in its determination of the market value of the greater of the long or short positions subject to paragraph (c)(2)(vi)(J) of Rule 15c3-1.

This letter does not address portfolio concentration charges on such securities, nor does it alter the staff's position stated in letter from the Division staff dated July 27, 2000 regarding portfolio concentration charges applicable to positions in securities without two investment grade NRSRO ratings.<sup>7</sup> However, this letter will replace and supersede the Marketability of Certain Securities Letter.

In addition, this Division staff position is based strictly on the facts and circumstances stated in your request. Any different facts or circumstances from those set forth in your request may require a different response. Furthermore, this response expresses the Division staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Division staff expresses

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<sup>5</sup> Paragraph number 3 remains unchanged in substance from the Marketability of Certain Securities Letter, but contains edits to clarify that the net capital deductions described in the letter were originally intended to apply only to the *greater* of the gross long or *gross* short *market* value of positions in debt securities and preferred stock not rated in one of the four categories by at least two NRSROs.

<sup>6</sup> Securities with an initial issuance of less than \$20 million are included in category (d) above if the issuer has another outstanding issue of debt securities or preferred stock not rated in one of the four highest categories by at least two NRSROs, which has an initial issuance of \$50 million or more.

<sup>7</sup> See letter dated July 27, 2000 from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to Charles F. Vadala, Chairman, Capital Committee, Securities Industry Association (regarding portfolio concentration charges for certain securities).

no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal, state, or foreign laws. This position is subject to modification or revocation at any time. If you have any questions regarding this letter, please email [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or call 202-551-5777.

Sincerely,

**Macchiaroli,  
Michael A.**

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Macchiaroli, Michael A.  
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Michael A. Macchiaroli  
Associate Director  
Division of Trading and Markets

cc: Yui Chan, FINRA