



DIVISION OF
MARKET REGULATION

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

December 27, 2000

Mr. Paul B. Uhlenhop
Lawrence, Kamin, Saunders & Uhlenhop
208 South La Salle Street, Suite 1750
Chicago, Illinois 60604-1188

Dear Mr. Uhlenhop:

This is in response to your letter dated December 30, 1999, and telephone conversations with the staff of the Division of Market Regulation ("Division"), in which you request on behalf of TransMarket Group LLC ("TransMarket"), that the Division allow TransMarket to execute and clear transactions in government securities and carry such securities in accounts for certain persons not registered as broker-dealers with the Securities and Exchange Commission ("Commission") without requiring that TransMarket comply with Rule 15c3-3 (17 C.F.R. 240.15c3-3) under the Securities Exchange Act of 1934 ("Exchange Act").

I. FACTS

I understand the following facts to be pertinent to your request: TransMarket is registered with the Commission as a broker-dealer under Section 15 of the Exchange Act and with the Commodity Futures Trading Commission as a futures commission merchant under Section 4d of the Commodity Exchange Act. TransMarket's designated examining authority for purposes of the Exchange Act is the National Association of Securities Dealers, and its designated self-regulatory organization for purposes of the Commodity Exchange Act is the Chicago Board of Trade. TransMarket is also registered with the Commission as a U.S. government securities broker-dealer. In connection with its activities as a futures commission merchant, TransMarket executes and clears futures and options on futures transactions,¹ and carries accounts for itself and persons who are members of commodities exchanges and other professional futures traders ("Registered Floor Persons").² In connection with its securities business, TransMarket clears and carries all of its customer securities transactions on a fully-disclosed basis through BNY Clearing Services LLC.

¹ For purposes of this letter, the terms "futures," "futures contracts" and "options on futures" shall have the meaning given to such terms in Rule 3a43-1 under the Exchange Act.

² TransMarket also executes futures and options on futures transactions for retail customers; these transactions are cleared and carried through BNY Clearing Services LLC. Note that the relief provided in this letter does not extend to such retail customers and is limited only to Registered Floor Persons as defined above.

In your letter, you request that the Division provide written assurance that it will not recommend enforcement action against TransMarket if it executes and clears government securities transactions and carries securities accounts for its Registered Floor Persons that are incidental to such persons' futures related business without requiring that TransMarket comply with Rule 15c3-3. You represent that TransMarket will be placed in a competitive disadvantage if it is unable to execute and clear government securities transactions and carry those securities for Registered Floor Persons, and you submit a proposal that you believe removes the competitive disadvantage without compromising the regulatory objectives of the Commission.

Under the proposal, TransMarket will be able to execute and clear transactions in government securities and carry securities accounts for Registered Floor Persons without complying with Rule 15c3-3 only if such transactions (i) are for delivery pursuant to a futures contract, (ii) are for risk reduction or arbitrage of positions in futures or options on futures, (iii) are in connection with a trading strategy involving the purchase or sale of securities that are related to proposed or existing positions in futures or options on futures, or (iv) are in connection with a bona fide exchange of futures for physicals (as agent or principal) or a repurchase or reverse repurchase transaction. In addition, Registered Floor Persons will be required to enter into an agreement with TransMarket to the effect that any claims (including any resulting from repurchase agreements or credit balances) it has against TransMarket in excess of amounts that are satisfied from the segregated fund maintained in accordance with Section 4d(2) of the Commodity Exchange Act shall be subordinated to the claims of other Rule 15c3-3 customers of TransMarket. In connection with such agreement, each Registered Floor Person will be asked to acknowledge that it will not be a "customer" as defined under Rule 15c3-3 and that it will not be entitled to the protections afforded by Rule 15c3-3 or the Securities Investor Protection Act of 1970.

II. DISCUSSION

Rule 15c3-3 generally requires every broker-dealer that carries customer accounts to maintain physical possession or control of all fully paid and excess margin securities. The Rule also requires firms to make a periodic computation to ascertain the amount of money it holds that is either customer money or money obtained from the use of customer securities (*i.e.*, customer credits). If customer credits exceed the amount customers owe the firm (*i.e.*, customer debits), the broker-dealer must deposit the excess in a special reserve bank account for the exclusive benefit of its customers.

Subparagraph (a)(1) of Rule 15c3-3 defines the term "customer" as any person from whom or on whose behalf a broker-dealer has received or acquired or holds funds or securities for the account of that person. Among other things, the term "customer" does not include a broker-dealer, a municipal securities dealer, or a government securities broker or dealer. Subparagraph (a)(1) also provides that "[t]he term shall not include . . . 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 subordinated to the claims of creditors of the broker or dealer."

Mr. Paul B. Uhlenhop

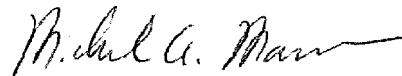
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Because Registered Floor Persons are not broker-dealers and are not excluded by any other provision of subparagraph (a)(1) of Rule 15c3-1, Registered Floor Persons are "customers" as defined by Rule 15c3-3. Accordingly, TransMarket is required to comply with Rule 15c3-3 to the extent Registered Floor Persons execute and clear government securities transactions through, and maintain securities accounts with TransMarket. However, based upon the facts set forth above, the Division will not recommend enforcement action to the Commission if TransMarket executes and clears transactions in government securities and carries securities accounts for Registered Floor Persons under your proposal described above without treating Registered Floor Persons as customers for purposes of Rule 15c3-3.

Please note that in taking this position, the Division expresses no view with respect to legal representations made in your letter or the applicability of any other federal or state laws. You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the securities laws.

Sincerely,



Michael A. Macchiaroli
Associate Director

cc: Ms. Susan DeMando, NASD Regulation, Inc.
Mr. Samuel Luque, Jr., NASD Regulation, Inc.