



DIVISION OF
MARKET REGULATION

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

December 30, 1999

Mr. Raymond Hennessy
Vice President, Member Firm Regulation
New York Stock Exchange, Inc.
20 Broad Street
New York, NY 10005

RE: Prime Brokerage Arrangements between Broker-Dealers & Certain Investment Advisors

Dear Mr. Hennessy:

This is in response to your letter of December 27, 1999, in which you request that the Division of Market Regulation grant a permanent extension of the July 9, 1997 no-action letter regarding the treatment of prime broker arrangements for broker-dealers that engage in prime brokerage activities with certain investment advisers that are no longer required to be registered under Section 203 of the Investment Advisers Act of 1940 (Adviser's Letter)¹.

The Adviser's Letter extended the no action relief, granted under Sections 7, 10, 11(d), 15(c)(3), and 17 of the Securities Exchange Act of 1934 ("Exchange Act"),² Rules 10a-1, 10b-10, 11(d)(1), 15c3-1, 15c3-3, 17a-3 and 17a-4 thereunder,³ and Regulation T,⁴ provided by the Division's January 25, 1994 prime brokerage letter ("Prime Broker Letter")⁵. The Adviser's Letter states that Division will not recommend enforcement action through December 31, 1997.

¹ Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, SEC to Jeffrey C. Bernstein, Chairman, Ad Hoc Prime Brokerage Committee, Securities Industry Association (July 9, 1997).

² 15 U.S.C. 78g, 78j(b), 78k(d), 78o(c)(3), and 78(q).

³ 17 CFR 240.10a-1, 240.10b-10, 240.11(d)(1), 240.15c3-1, 240.15c3-3, 240.17a-3, and 240.17a-4.

⁴ 12 CFR 220.

⁵ Letter from Brandon Becker, Director, Division of Market Regulation, SEC to Jeffrey C. Bernstein, Prime Broker Committee, c/o Bear Stearns & Co., Inc. (Jan. 25, 1994).

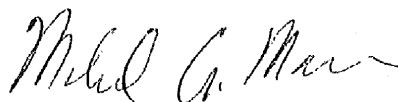
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In letters dated December 30, 1997⁶ and December 23, 1998,⁷ the Division extended the no action relief granted in the Adviser's Letter until December 31, 1998 and December 31, 1999 respectively. You now request that the Division grant permanent status to the relief granted in the Adviser's Letter.

The Division believes that the relief granted in the Advisors Letter should be extended permanently. Accordingly, the Division will not recommend enforcement action to the Commission under Sections 7, 10, 11(d), 15(c)(3), and 17 of the Securities Exchange Act of 1934 ("Exchange Act"), Rules 10a-1, 10b-10, 11(d)(1), 15c3-1, 15c3-3, 17a-3 and 17a-4 thereunder, and Regulation T, if a broker dealer engages in prime brokerage activities as described in the Prime Broker Letter with certain investment advisers that, subject to the Investment Advisers Supervision Coordination Act⁸ are no longer required to be registered under Section 203 of the Adviser's Act.

This is a staff position with respect to enforcement only and does not represent a legal conclusion regarding the application of the federal securities laws. This position is based solely on the representations which have been made to the Division. Any different facts might require a different response. Furthermore, this position may be withdrawn or modified at any time if the Division determines that such action is necessary in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of the federal securities laws.

Sincerely,



Michael A. Macchiaroli
Associate Director

cc: Susan Demando, NASD Regulation

⁶ Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, SEC to Mr. Raymond Hennessey, New York Stock Exchange, Inc., Mr. Thomas R. Cassella, National Association of Securities Dealers, Inc., and Mr. Jeffrey C. Bernstein, Ad Hoc Prime Brokerage Committee, Securities Industry Association (December 30, 1997).

⁷ Letter from Michael Macchiaroli, Assistant Director, Division of Market Regulation, SEC to Jeffrey C. Bernstein, Chairman, Ad-Hoc Prime Brokerage Group, Securities Industry Association (Dec. 23, 1998).

⁸ The Investment Advisers Supervision Coordination Act is Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (1996).