

**Securities Industry Association**

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February 18, 2004

Mr. Michael Macchiaroli  
Associate Director  
Securities and Exchange Commission  
450 5th Street NW  
Washington, DC 20549

Dear Mr. Macchiaroli:

The Capital Committee of the Securities Industry Association<sup>1</sup> requests that the staff of the Securities and Exchange Commission issue a no-action or interpretive letter that addresses an issue that only recently became codified as a result of a pronouncement dated November 7, 2003 made by the Financial Accounting Standards Board. FASB Staff Position No. FAS 150-3 makes clear that the effective date of Statement 150 regarding the treatment of certain mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable noncontrolling interests would not be deferred for non-public entities that are SEC registrants.

Since broker-dealers are SEC registrants, any of them that are non-public entities and, for example, issue certain mandatorily redeemable interests must treat these as liabilities for fiscal periods beginning after December 15, 2003. That is, many broker-dealers would be required to classify these items as liabilities rather than as capital under FAS 150.

The most obvious example of these types of instruments are partnership, limited liability company and corporate capital accounts that are the subject of agreements that require the mandatory redemption of these accounts

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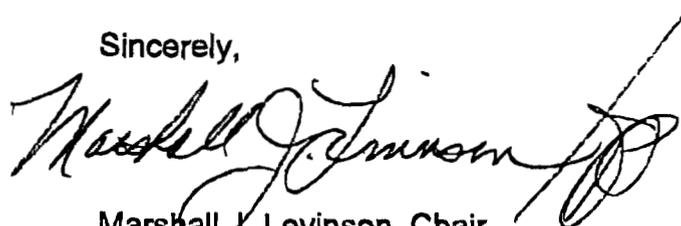
<sup>1</sup> The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated an estimated \$142 billion in domestic revenue and \$283 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com).)

upon an event certain such as the death of the owner of the capital. Since many broker-dealers have agreements such as partnership agreements, limited liability company operating agreements or shareholder agreements that contain mandatory redemption clauses, unless these broker-dealers eliminate these clauses or the SEC staff issues no-action, beginning January 1, 2004, these broker-dealers will potentially have no capital reflected in their statements of financial condition, their FOCUS reports, and their net capital computations. In addition, the broker-dealer's debt to debt-equity total ratio might suddenly be greater than the 70% limit expressed in paragraph (d) of the rule.

Accordingly, we request that the staff of the Commission issue a no-action letter indicating that broker-dealers that are non-public entities may add to net worth in determining net capital amounts that otherwise would represent capital. This should be similar to the addback to net worth of liabilities subordinated to the claims of general creditors. Furthermore, any amounts included by the broker-dealer as part of its net capital should be treated as subject to the limitations on withdrawal of equity capital contemplated by paragraph (e) of the rule and may be treated as equity in determining a broker-dealer's compliance with the debt to debt-equity total ratio contemplated by paragraph (d) of the rule. We respectfully request that any such relief or interpretation be implemented for a period of at least one year. That would allow the impacted broker-dealers the requisite time to analyze the accounting issue and implement any necessary changes to their capital structure.

Should you have any question about our letter, or wish us to amplify our remarks, please do not hesitate to contact me at 212-272-8760, or our staff advisor, Jerry Quinn, at 212-618-0507. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Marshall J. Levinson", with a large, stylized flourish extending from the end of the signature.

Marshall J. Levinson, Chair  
SIA Capital Committee