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March 20, 2002

Michael E. Don, Esq.  
President  
Securities Investor Protection Corporation  
805 Fifteenth Street  
Suite 8000  
Washington, D.C. 20005-2207

Dear Mr. Don:

I am writing to follow up on a brief discussion we recently had regarding a clarification of SIPC's policy on the close-out of repurchase transactions and securities lending transactions in which a SIPC member is a party. In particular, we discussed the need for a clarification of the letter dated February 4, 1986 that SIPC provided to The Bond Market Association (then known as the Public Securities Association) and the letter dated February 14, 1996 that SIPC provided to Cleary, Gottlieb, Steen & Hamilton (collectively, the "Repo Letters") (copies attached) regarding the close-out of repurchase agreements ("repos"). In addition, we are writing to discuss clarifying the letter dated August 29, 1988 provided to Cleary, Gottlieb, Steen & Hamilton regarding the close-out of securities lending transactions (the "Securities Lending Letter"). This clarification would not be intended to affect the positions of SIPC set forth in the letter of October 30, 1990 to James D. McLaughlin, Director, American Bankers Association and the letter of February 19, 1991 to The Bond Market Association (then known as the Public Securities Association) (the "1990 and 1991 Letters").

As discussed, repo and securities lending transactions play an important role in the efficient operation of the U.S. financial markets. It is therefore important to the growth and stability of the financial markets that there is minimal delay in the exercise by a counterparty of its contractual rights to close out and liquidate these transactions in the event of a broker-dealer's insolvency.

Specifically, we propose a clarification in both the Repo Letters and the Securities Lending Letter in order to avoid unnecessary delays in the close out of transactions where the repo buyer generally acquires title to the underlying securities rather than a security interest in the securities, and a securities lender acquires ownership of assets received as

“credit support” rather than a security interest therein.

Accordingly, we propose that SIPC modify the Repo Letters to clarify that SIPC would expect to receive an affidavit from a repo buyer attesting that:

- A. the affiant has no knowledge of any fraud involved in the repo transaction; and
- B. the repo buyer either has acquired ownership of the underlying securities or a perfected security interest in the underlying securities.

Similarly, we would propose that SIPC modify the Securities Lending Letter, to clarify that SIPC would expect to receive an affidavit of the securities lender attesting that:

- A. the affiant has no knowledge of any fraud involved in the securities lending transaction; and
- B. the securities lender either has acquired ownership of the securities received as credit support or a perfected security interest therein.

This modification would not affect the positions of SIPC set forth in the 1990 and 1991 Letters.

We also note that the Securities Lending letter addresses the close-out of securities lending transactions when a SIPC member is either a lender or a borrower in the transactions. The Repo Letters, in contrast, only address transactions in which a SIPC member is a repo seller. We further note that the 1990 and 1991 Letters state that SIPC agrees, where the SIPC member is a securities borrower, to ask the court to except from the stay the exercise by a financial institution or a stockbroker of its contractual right to utilize cash or letters of credit, held by it as collateral, to cause the liquidation of its contract for the loan of securities to the stockbroker being liquidated.

A repo seller who receives cash for the securities it sells (or “repos”) to a repo buyer is in a similar position to a securities lender who accepts cash collateral for lending out its securities. We therefore propose that, in a liquidation proceeding where the SIPC member is a repo buyer, the close-out of its repo transactions be effected in the same manner as the close-out of securities lending transactions under the 1990 and 1991 Letters. Specifically, we propose that SIPC ask the court to except from the stay the exercise by the repo seller of its contractual right to utilize cash to cause the liquidation of its contract for the repo of securities to the SIPC member being liquidated, whether or not the repo is a “repurchase agreement” as defined in the Bankruptcy Code.

For your convenience, we have enclosed a draft form of letter from SIPC describing a policy along the foregoing lines.

Thank you for your attention to this matter. Please feel free to contact me at (212) 440-9474 or our counsel, Nancy Jacklin, at Clifford Chance Rogers & Wells LLP (212-878-8244).

Sincerely,

Omer Oztan  
Vice President and  
Assistant General Counsel

Enclosures