CITICORP

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SEC LETTER

Advisers Act Sec. 203(a)
August 14, 1986

Based on the facts and representations contained in your letter of April 2, 1986, to Mary Chamberlin, Chief Counsel, Division of Market Regulation, as supplemented by your letters dated June 17, 1986, and July 28, 1986, we would not recommend any enforcement action to the Commission if any Foreign Securities Subsidiary does not register under the Investment Advisers Act of 1940 (“Advisers Act”). This position is based on our understanding that all investment advice and research disseminated to customers of Vickers N.Y. will be considered advice rendered by Vickers N.Y. and that there will be no direct communications between customers of Vickers N.Y. and any Foreign Securities Subsidiary regarding that advice and research. Unlike any Foreign Securities Subsidiary, Vickers N.Y., as a broker-dealer registered with the Commission, is excepted from the Advisers Act's definition of investment adviser pursuant to section 202(a)(11)(C) if the investment advice it renders is solely incidental to Vickers N.Y.'s activities as a registered broker-dealer and it receives no special compensation for the advisory services.

Because this position is based upon the representations contained in your letter, you should note that any different facts or conditions might require a different conclusion. Further, this response only expresses the Division's position on enforcement action and does not purport to express any legal or interpretative conclusions on the questions presented.

We understand that the Division of Market Regulation has responded separately to your question under section 15(a) of the Securities Exchange Act of 1934.

Thomas P. Lemke
Chief Counsel

INCOMING LETTER

April 2, 1986
Mary Chamberlin, Esq.
Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Room 5024
Washington, D.C. 20549

Dear Ms. Chamberlin:

We are writing on behalf of Citicorp to request assurance that the staff will not recommend enforcement action to the Commission if certain of Citicorp's direct or indirect foreign subsidiaries, authorized under local law and applicable Federal banking law to act as securities dealers abroad (“Foreign Securities Subsidiaries”), do not register in the U.S. as either broker-dealers or investment advisers under the circumstances described below.

DESCRIPTION OF PROPOSED ACTIVITIES

Background. Citibank, N.A. (“Citibank”), a wholly-owned subsidiary of Citicorp, intends to acquire at least 80% of the capital stock of Vickers da Costa Securities (Holdings) Inc., a domestic corporation

which owns Vickers da Costa Securities Inc. (“Vickers NY”), a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. (the “NASD”).1 Vickers NY is the former New York office of Vickers da Costa Limited which was acquired by Citicorp in 1984.2 Vickers NY's principal business will be to act as agent for transactions in securities of foreign issuers traded mainly on foreign securities exchanges but also in U.S. markets (“Foreign Securities”) and American Depository Receipts (“ADRs”) representing securities of foreign issuers. As is presently the case, Vickers NY will have almost exclusively institutional customers, including Foreign Securities Subsidiaries. Vickers NY will also provide to its customers research and recommendations regarding Foreign Securities, ADRs and foreign issuers.

Vickers NY proposes to execute orders for Foreign Securities and ADRs placed by Foreign Securities Subsidiaries as well as U.S. institutional customers. Subject to applicable local regulatory requirements, the Foreign Securities Subsidiaries are active market makers outside the U.S. in Foreign Securities. As is the case with U.S. dealers, the quality of the secondary market provided by a Foreign Securities Subsidiary abroad depends upon maintaining a large flow of orders to provide depth and liquidity. It is common for foreign securities dealers to buy (or sell) foreign securities in which they make a market abroad and sell (or buy) the same security in the U.S. Typically, the U.S. side of the trade is entered with U.S. registered broker-dealers, who may or may not be affiliates, and who make markets in Foreign Securities and ADRs traded in the U.S. Indeed, the Foreign Securities Subsidiaries presently effect transactions in the U.S. with several unaffiliated broker-dealers as well as Vickers NY. However, after Citibank's acquisition of Vickers NY, Section 16 of the Glass-Steagall Act will prohibit Vickers NY, as an operating subsidiary of Citibank, from dealing in Foreign Securities and ADRS, except as agent.

The Foreign Securities Subsidiaries propose to enter purchase and sell orders for Foreign Securities and ADRs traded in the U.S. through Vickers NY, which will effect transactions in a riskless principal capacity equivalent to agency activities permitted to banks and their affiliates under the Glass-Steagall Act. This brokerage relationship with Vickers NY will improve the efficiency of the operations conducted abroad by the Foreign Securities Subsidiaries and increase their ability to compete, with resultant benefits to investors, both here and abroad, seeking best price and execution. Since no Foreign Securities Subsidiary is presently registered as a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), Citicorp seeks assurance that the proposed brokerage arrangement described further below between Vickers NY and Foreign Securities Subsidiaries will not require any Foreign Securities Subsidiary to register with the Commission under Section 15(a) of the Exchange Act.

Order Execution. To implement the orders of the Foreign Securities Subsidiaries, Vickers NY will enter bid and ask quotations in the automated quotations system operated by the NASD (“NASDAQ”) respecting Foreign Securities and ADRs. After its acquisition by Citibank, Vickers NY will, for purposes of the NASDAQ system, continue to be a registered NASDAQ market maker3 eligible to enter quotations on Level 3 (the level permitting entry of bid/ask quotations by market professionals). However, as described below, the quotes in NASDAQ will always reflect a previously-entered firm order from a Foreign Securities Subsidiary. If a Vickers NY “bid” quotation is accepted, Vickers NY will simultaneously record on its books and confirm a contemporaneous sale to a Foreign Securities Subsidiary. Conversely, if a Vickers NY “asked” quotation is accepted by a third party after Vickers NY has received an order to sell a security from a Foreign Securities Subsidiary, Vickers NY will effect a contemporaneous purchase from the Foreign Securities Subsidiary and a sale to the third party. From a U.S. Federal securities law perspective, Vickers NY will be a riskless principal in these transactions, offsetting one customer order with another contemporaneous matching order.4 From the perspective of a Foreign Securities Subsidiary, Vickers NY will be a broker with whom it is placing orders. When acting in a riskless principal capacity, Vickers NY will be compensated solely on a commission basis, as is the case in agency transactions, and will not earn any dealer's mark-up.

Vickers NY may also effect transactions in Foreign Securities in which it is not a Level 3 market maker. After receiving an order inquiry from a U.S. customer, Vickers NY will communicate with a U.S. institutional customer, a U.S. securities firm or the Foreign Securities Subsidiary which acts as a market maker, and obtain an order offsetting the order inquiry of the U.S. customer of Vickers NY. On the other hand, if the order originates abroad, the process will be reversed.

The Foreign Securities Subsidiaries will effect only secondary market trades incident to their permissible foreign securities business. The Foreign Securities Subsidiaries will not be engaged in the securities

business in the U.S. They will be customers of Vickers NY. Further, all U.S. persons will be customers of Vickers NY and will not have any contact with the Foreign Securities Subsidiaries. Vickers NY will carry all customer accounts, send confirmations and make funds and securities available to U.S. customers.

As a registered broker-dealer, Vickers NY is subject to the full panoply of regulations applicable to registered broker-dealers under the Exchange Act, including the prohibitions against manipulative, deceptive or fraudulent devices or contrivances contained in Section 15(c) of that Act and the series of rules thereunder. In addition, Vickers NY is required to satisfy the obligations of a NASDAQ market maker and, as an NASD member firm, must comply, among other things, with the NASD's rules of fair practice and the standards of commercial honor and just and equitable principles of trade embodied therein.

All persons associated with Vickers NY meet applicable NASD registration and qualification requirements. On occasion, employees of Foreign Securities Subsidiaries may perform assignments in the U.S. involving contact with U.S. customers. For this purpose, such employees will become employees of Vickers NY and will meet the NASD's qualification and testing requirements for registered representatives. While they are in the U.S., they will be associated persons of Vickers NY, subject to the supervision and control of Vickers NY.

The proposed arrangement is, in all relevant circumstances, no different from the one presently in place between the Foreign Securities Subsidiaries and U.S. broker-dealers who execute orders placed from abroad by Foreign Securities Subsidiaries. While the proposed transactions take the form of riskless principal transactions involving a special contractual relationship, described in more detail below, between the Foreign Securities Subsidiaries and Vickers NY (an arrangement designed entirely to make it clear that Vickers NY will have no risk beyond that carried by a securities firm acting as agent), in substance Vickers NY will be performing the same brokerage services it presently provides. Neither the Commission staff nor any court has suggested that, if an unregistered foreign broker-dealer places orders through a U.S. registered broker who may be acting as a broker for a U.S. customer on the other side of the trade, such a relationship, without more, raises customer protection concerns requiring the foreign broker-dealer to register.5

Contractual Arrangements. Vickers NY and the Foreign Securities Subsidiaries will enter into contractual arrangements designed to eliminate any principal risk that may be incurred by Vickers NY arising out of its status as a nominal NASDAQ Level 3 market marker in Foreign Securities and ADRs.6

Vickers NY will enter into a brokerage agreement with each Foreign Securities Subsidiary, under the terms of which Vickers NY will agree to execute buy and sell orders in Foreign Securities and ADRs. The Foreign Securities Subsidiary will designate, in a schedule to the brokerage agreement, the Foreign Securities and ADRs traded on NASDAQ for which Vickers NY will become a registered NASDAQ Level 3 market maker. With respect to Foreign Securities not traded on NASDAQ, Vickers NY will enter quotations in the daily “pink sheets,” a quotation medium for securities traded over-the-counter other than on NASDAQ.

Before the opening of trading on the NASDAQ market each day, the Foreign Securities Subsidiaries will place with Vickers NY orders for purchases and sales of each designated security at a price or prices related to the current market or “at the market,” as the Foreign Securities Subsidiary deems appropriate. The Foreign Securities Subsidiaries will have the power to change the price and size parameters of the orders throughout the day, however. It is expected that the orders will always be sufficient to satisfy Vickers NY's obligations as a NASDAQ Level 3 market maker.

The Foreign Securities Subsidiaries will pay Vickers NY a brokerage commission for its services and Vickers NY will agree not to resell securities for its own account at a mark-up. In addition, Vickers NY will perform certain services in connection with its brokerage activities for Foreign Securities Subsidiaries, for which Vickers NY will receive a fee. These services could include expertise in the timing and execution of U.S. trades in Foreign Securities and ADRs, as well as research and advice as to the U.S. securities markets generally.

Research Services. Brokers in foreign securities typically provide customers with research on foreign issuers and their securities. As part of its business, Vickers NY will purchase, for a fee, such research

from certain Foreign Securities Subsidiaries or their affiliates. In addition, at present Vickers NY has a small research department which produces on a limited basis research and advice on Foreign Securities. The research generated will take the form of written analyses and recommendations about the securities of foreign companies. Vickers NY will provide this information to its U.S. institutional customers. The source of all written advisory information will be identified to the customer. Institutional customers will receive research from Vickers NY by means of periodic mailings of written material and over the telephone. Based on information from Vickers NY, as well as other services available, U.S. institutional customers will make their own investment decisions. Vickers NY has no discretionary accounts. Decisions whether or not to purchase or sell securities which are the subject of research reports or other advice provided by Vickers NY will be made solely by the customer.

Vickers NY will be reimbursed for its research services to U.S. customers through “soft dollar” payments in the form of directed brokerage and related commissions.

No Foreign Securities Subsidiary is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (the “Advisers Act”). Accordingly, Citicorp seeks confirmation that the proposed arrangement regarding research services to be purchased by Vickers NY will not require any Foreign Securities Subsidiary to register with the Commission as an investment adviser.

DISCUSSION

Order Execution. The Foreign Securities Subsidiaries presently execute orders in the U.S. through registered broker-dealers. In these transactions, which may be effected by the U.S. broker-dealer as riskless principal, agent or dealer, the Foreign Securities Subsidiary, as the customer of the U.S. broker, is not deemed to be engaged in the securities business in the U.S. and, thus, no purpose would be served by extending the broker-dealer registration requirements to the Foreign Securities Subsidiary. In our view, there is nothing in the proposed order execution arrangement which requires a different result.

The proposed activities are structured to ensure that U.S. customers enjoy the full protection of the Federal securities laws applicable to registered broker-dealers, as well as those afforded by the rules of the NASD applicable to NASDAQ Level 3 market makers and NASD member firms generally. As discussed above, all U.S. persons will be customers of Vickers NY, which will carry customer accounts, send confirmations and make funds and securities available at settlement. No U.S. customer will have any contact with the Foreign Securities Subsidiaries. Indeed, since Vickers NY will place quotes in NASDAQ and execute orders as a riskless principal, a U.S. customer will not know that a Foreign Securities Subsidiary may have placed a contemporaneous offsetting transaction with Vickers NY. Further, no employees of any Foreign Securities Subsidiary will deal directly with any U.S. customer of Vickers NY in connection with these transactions (except as an employee of Vickers NY, as described above).

As a riskless principal, Vickers NY is fully responsible for the performance of any of its customers, including a Foreign Securities Subsidiary. If a contra-party, including a Foreign Securities Subsidiary, fails to deliver funds or securities, Vickers NY will be required to satisfy the order placed by its U.S. customer. Although Vickers NY will enter into contractual arrangements with the Foreign Securities Subsidiaries designed to clarify that Vickers NY will have no risk beyond that of any broker acting as agent for its customers, these arrangements will not in any way alter or diminish Vickers NY's obligations to its U.S. customers. Moreover, the relationship between Vickers NY and the Foreign Securities Subsidiaries ensures that the Commission will have access to all responsible affiliated parties through Vickers NY.

Research Services. As discussed above, Vickers NY proposes to purchase research from certain Foreign Securities Subsidiaries and disseminate that research under its own name, with the source of the research identified, to U.S. institutional customers.7 In two relevant no-action letters, the staff of the Commission has taken the position that an unregistered foreign broker-dealer is not required to register as a broker-dealer if it generates orders for foreign securities by furnishing investment research to U.S. registered broker-dealers (including affiliates) for dissemination to U.S. customers.8 We believe the proposed arrangements between Vickers NY and the Foreign Securities Subsidiaries relating to the purchase and dissemination in the U.S. of investment research and advice are similar in all material respects to those described in the relevant no-action letters.

Vickers NY will disseminate the research under its own name, and, in compliance with the requirements of Section 28(e) of the Exchange Act, will identify the source of the information. Vickers NY will distribute the research to its U.S. institutional customers. Vickers NY will carry the customer accounts and have the primary relationship with its institutional customers. Vickers NY will be responsible for confirming all transactions and for all other aspects of its U.S. customers' accounts. Orders for Foreign Securities covered by the research typically will be placed with Vickers NY and, under the order execution arrangements described above, Vickers NY will execute the orders as riskless principal and effect an offsetting transaction with a Foreign Securities Subsidiary. All questions from U.S. customers about the research and the securities covered by the research will be handled by Vickers NY. Vickers NY will be paid on a “soft dollar” commission basis for its services.

If any employee of a Foreign Securities Subsidiary is in a position to have contact with U.S. customers, that person will become an employee of Vickers NY and, as an associated person of Vickers NY, will meet applicable NASD testing and qualification requirements. As associated persons of Vickers NY, they will be subject to its supervision and control. In this way, the Commission will have access to all affiliated parties responsible for U.S. customer contact.

For the reasons discussed above, it is our opinion that the proposed arrangements between Vickers NY and Foreign Securities Subsidiaries would not require any Foreign Securities Subsidiary to register either as a broker-dealer under the Exchange Act or as an investment adviser under the Advisers Act. Therefore, we request that the staff confirm that it will not recommend to the Commission that any action be taken pursuant to Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act to require any Foreign Securities Subsidiary to register as either a broker-dealer or an investment adviser, respectively, if the Foreign Securities Subsidiaries enter into the proposed arrangements with Vickers NY described above.

* * * * *

By separate letter, we are requesting, pursuant to Rule 200.81 of the Commission's Rules of Practice, that this letter and the staff's response be kept confidential for a period of 120 days from the date of the response. If you have any questions or need any additional information concerning the foregoing, please do not hesitate to telephone me at (212) 909–6418 or, in my absence, Marcia MacHarg at (202) 289–0100.

Very truly yours,
Stephen J. Friedman

Footnotes

1 In accordance with the notification procedures of 12 C.F.R. § 5.34(d)(1), Citibank has notified the Office of the Comptroller of the Currency of its intention to acquire Vickers da Costa Securities (Holdings) Inc.

2 An organization chart showing the position of Vickers da Costa Limited and its principal affiliates in the Citicorp organization is attached to this letter as Exhibit A.

3 The term “market maker” is defined in Section 3(a)(38) of the Exchange Act to mean, among other things, “any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy or sell such security for his own account on a regular or continuous basis.”

4 See Rule 10b–10(a)(8)(i)(A) under the Exchange Act. In no-action responses, the staff of the SEC has interpreted the riskless principal disclosure requirements to apply only when a broker-dealer first receives a customer order and then effects a contemporaneous offsetting transaction with another person. See, e.g., Buys-MacGregor, MacNaughton-Greenawalt & Co. (Feb. 1, 1980).

5 Indeed, the staff recently took a favorable no-action position with respect to the “flip side” of the proposed arrangement. See Wood Gundy, Inc. (Dec. 9, 1985). In that letter, Wood Gundy, Inc., an

unregistered Canadian broker-dealer, proposed to "receive" orders for the purchase and sale of Canadian securities from U.S. brokers acting on behalf of American customers. Wood Gundy, Inc. represented that it would deal only with U.S. broker-dealers, not with U.S. customers.

6 See Schedule D to the NASD's By-Laws adopted pursuant to Article VII, Section 1(a)(6) of the By-Laws, NASD Manual (CCH) ¶ 1754 (1983).

7 Vickers NY is not registered as an investment adviser in reliance on the exemption from registration provided in Section 202(a)(ii)(C) of the Advisers Act for "any broker or dealer whose performance of [advisory] services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor...."

8 See Smith New Court Inc. (Sept. 27, 1985) and Scrimgeour, Kemp-Gee & Co. (June 25, 1981). Significantly, the Smith New Court letter described an arrangement in which a U.K. investment adviser not registered as an investment adviser in the U.S. supplied investment research and advice on foreign securities to a U.S. affiliate registered as a broker-dealer and a member of the NASD. The U.S. broker-dealer placed orders from U.S. customers for foreign securities with another foreign affiliate on an "omnibus" basis for execution in London.

INCOMING LETTER

June 17, 1986
Richard B. Wessel, Esq.
Associate Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Wessel:

This is to supplement our letter, dated April 2, 1986, on behalf of Citicorp to request assurance that the staff will not recommend enforcement action to the Commission if certain of Citicorp's direct or indirect foreign subsidiaries do not register in the U.S. as either broker-dealers or investment advisers under the circumstances described in that letter.

In our letter, we noted that Citibank, N.A. ("Citibank") intended to acquire at least 80% of the capital stock of Vickers da Costa Securities (Holdings) Inc. ("Holdings"), which owns Vickers da Costa Securities Inc., a registered broker-dealer and member of the National Association of Securities Dealers, Inc. In this connection, we informed the staff of the Commission that Citibank had notified the Office of the Comptroller of the Currency (the "OCC") of its intention to acquire Holdings. We have attached a copy of a letter, dated June 13, 1986, from the OCC notifying Citibank that it may proceed with the proposed acquisition of Holdings. In its letter, the OCC concluded that the proposed securities activities to be conducted are permissible activities under the Glass-Steagall Act.

We have previously requested, pursuant to Rule 200.81(b) of the Commission's Rules of Practice, that our letter of April 2, 1986 and the staff's response be kept confidential for a period of 120 days from the date of the response. For the reasons set forth in connection with our initial request, we respectfully request the same confidential treatment of this letter and the OCC's letter attached hereto, which we submit herewith as supplements to our earlier letter.

Very truly yours,

Marcia L. MacHarg

ENCLOSURE

June 13, 1986
Mr. Ellis E. Bradford
Vice President
Citibank N.A.
399 Park Avenue
New York, New York 10043

Re: Acquisition of Vickers da Costa Securities (Holdings), Inc.

Dear Mr. Bradford:

This letter will confirm our receipt of the Notification of Intention to Engage in Activities Through an Operating Subsidiary Pursuant to 12 C.F.R. § 5.34 ("Notification"), dated February 28, 1986, submitted by Citibank, N.A. ("Bank"). In its notice, the Bank indicates that it intends to purchase at least 80% of Vickers da Costa Securities (Holdings), Inc., ("Parent") which owns Vickers da Costa Securities, Inc. ("Company"). This Office hereby notifies the Bank in accordance with 12 C.F.R. § 5.34(d)(1) that it has completed its review of the Bank's Notification and that the extension of the review period is terminated. This Office concludes that the Bank, subject to the limitations stated herein, may proceed with the acquisition of Company.

FACTS

On the basis of your conversations with this Office, your Notification letter with accompanying legal opinion dated February 28, 1986, our meeting of April 25, 1986, with Bank representatives, and other materials, we understand the facts to be as follows:

Company is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD"), and is authorized to execute trades through the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). The principal business of Company is that of broker with respect to securities of foreign issuers traded mainly on foreign securities exchanges, but which also are traded in U.S. markets, and American Depository Receipts ("ADRs"). Company's current customers are almost exclusively institutional customers and include foreign subsidiaries ("Foreign Securities Subsidiaries") owned directly and indirectly by Citicorp, the Bank's parent holding company ("Corporation"). After its acquisition by the Bank, Company will continue the foregoing business arrangements.

Company will act as a broker for its customers by executing a purchase or sale of a security upon the order of one customer only if it can conduct a simultaneous offsetting sale or purchase upon the order of second customer. This manner of conducting brokerage is referred to as a "riskless principal" transaction. A riskless principal transaction is defined as one in which the broker, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security to offset a contemporaneous sale to (or purchase from) the customer. Securities and Exchange Commission ("SEC"), Securities Exchange Act Release No. 21708 (February 4, 1985).

Company will be compensated for its services through the payment of brokerage commissions by its customers. Company will not resell any securities acquired through the activities described herein at a mark-up. Company will disclose to its customers that it has acted as a riskless principal upon the order of a customer and not for its own account and will disclose the amount of its commission. Company will not disclose the "at risk" principal to the transaction. Company, however, will confirm to customers, if applicable, that an affiliate of Company may have separately made a profit or loss on the transaction.

In addition to its brokerage activities, Company will provide investment research and advice to its customers. Company's U.S. customers may receive research and advice that will be produced in house by Company or purchased by Company from the Foreign Securities Subsidiaries for a fee. Company will not require a customer to subscribe for the advice service, and a customer that subscribes to the advice service will not be required to execute trades in conformance with that advice. Company will receive payment for such services through "soft dollars" in a manner consistent with Section 28(e) of the Securities Exchange Act of 1934, 15 U.S.C. § 78bb(e). All transactions for which Company will receive

“soft dollar” compensation, however, will be executed solely at the direction of the customer; Company will not maintain any discretionary accounts. Also, Company will provide to the Foreign Securities Subsidiaries research and advice concerning U.S. markets and expertise in the timing and execution of trades in foreign securities. Company will receive a monthly fee from the Foreign Securities Subsidiaries for such services.

With regard to trades conducted with the Foreign Securities Subsidiaries, Company will enter into contractual agreements with the Foreign Securities Subsidiaries which will unconditionally preclude Company's exposure to any principal risk. Company will conduct trades with the Foreign Securities Subsidiaries in the following manner: At the beginning of every business day, the Foreign Securities Subsidiaries will place with Company bid and ask quotations at a price related to the current market price for each foreign security and ADR in which the Foreign Securities Subsidiaries are going to conduct trades. In turn, Company will enter quotations on NASDAQ or other over-the-counter listings such as the “pink sheets” that will always reflect these firm orders from a Foreign Securities Subsidiary. If a Company “bid” quotation is accepted, Company will record the purchase from the third party and simultaneously record and confirm a contemporaneous sale of the securities to the Foreign Securities Subsidiary. If a Company “asked” quotation is accepted, Company will record a purchase from the Foreign Securities Subsidiary and a contemporaneous resale to the third party.

Additional contractual arrangements with the Foreign Securities Subsidiaries will provide Company with protection against liability that may arise should a U.S. customer or Foreign Securities Subsidiary fail to execute any transaction at settlement. In order to ensure the satisfaction of their obligation to settle every transaction executed by Company for their accounts, the Foreign Securities Subsidiaries will irrevocably authorize Company to instruct appropriate officers of Corporation or any of its affiliates to transfer funds to the account of Company prior to the settlement date of any trade. The Foreign Securities Subsidiaries also will agree to deliver to Company or its nominee any security which is the subject of a sale order prior to settlement date. In the event of a failure to deliver by a Foreign Securities Subsidiary, Company will have the authority to transfer sufficient funds of the Foreign Securities Subsidiary to permit Company, if it deems advisable, to purchase the security in the market in order to make delivery.

If a U.S. customer of Company fails to deliver cash at settlement, Company will agree that the securities already delivered by a Foreign Securities Subsidiary will be redelivered to it immediately and the Foreign Securities Subsidiary will agree to bear any risk that the market value of the security may have decreased (or increased) during the period it was in the custody of Company. Under the terms of the brokerage agreement, the parties will acknowledge that under no circumstances will Company be obligated to buy or sell for its own account any security which is the subject of an order placed by a Foreign Securities Subsidiary.

In addition, the Foreign Securities Subsidiary will agree to indemnify and hold harmless Company from and against any and all claims, liabilities, losses, damages, costs and expenses attributable to its brokerage activities on behalf of the Foreign Securities Subsidiary. This will include any liability Company may have to a customer resulting from a failure by a Foreign Securities Subsidiary to deliver cash or securities at settlement. However, it is recognized that the obligations of Company to its customer are no different from those owed by any broker acting as agent for its customer which is an undisclosed principal.

With respect to those securities that are the subject of orders from the Foreign Securities Subsidiaries, Company will be an NASD registered market maker authorized to enter bid and ask quotations on NASDAQ Level 3. Company, under NASD By-Laws, must become a market maker in order to subscribe to Level 3 service, which is the level of service that authorizes a member to enter bid and ask quotations on the NASDAQ system. Although Company will register as a market maker with the NASD, it must always conduct its activities in the manner of a riskless principal. The above-described contractual arrangements with the Foreign Securities Subsidiaries, which also apply to any quotations entered by Company in other over-the-counter listing publications, enable Company to operate as a market maker while adhering to the requirement that it conduct its activities only as a riskless principal.1

Company also will effect transactions for its customers in foreign securities for which Company is not a market maker. In these transactions, Company will contact a Foreign Securities Subsidiary to obtain an

offsetting order after receiving an inquiry from a U.S. customer. If the order from the U.S. customer is greater than the amount the Foreign Securities Subsidiary is willing to buy or sell, Company will go into the market and attempt to purchase or sell the amount in excess of the amount ordered by the Foreign Securities Subsidiary. Thus, Company will complete the trade in a “riskless principal” capacity. Company, however, will only accept an order under these circumstances if there is a contemporaneous offsetting order.

In some cases, Company may effect a riskless principal transaction with a U.S. broker-dealer in securities in which Company is not a market maker. In the event of a fail by its customer, Company will be obligated to settle the trade. If Company is required at settlement to hold a security due to a customer fail, the Foreign Securities Subsidiary will agree to enter into a simultaneous transaction with Company to offset the failed transaction and will indemnify Company for any losses or costs related to the failed transaction which Company is unable to recover from the failing party. As a result, Company will not have any inventory risks.

ANALYSIS

Based on the facts presented, it is this Office's view that Company's activities are permissible securities activities under the Glass-Steagall Act. Brokerage activities conducted as a riskless principal are authorized under section 16 of the Act, and as with other brokerage activities, brokerage as riskless principal presents none of the “hazards” that the Act was designed to prevent. Also, the provision of research and advice in conjunction with Company's brokerage service is permitted by the Act.

I. “Riskless Principal” Activities

A. Riskless Principal Brokerage Is Permitted By The Express Terms Of Section 16 Of The Glass-Steagall Act

Section 16 provides:

> The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock.
>
> 12 U.S.C. § 24(7).

This provision has been interpreted by courts as allowing national banks and their subsidiaries to engage in brokerage activities, where the bank executes securities transactions without recourse, for the order and the account of customers, and not for its own account. Securities Industry Association v. Comptroller of the Currency, 577 F.Supp. 252 (D.D.C.1983), aff'd, 758 F.2d 739 (D.C.Cir.1985), appellant's petition for cert. denied, 106 S.Ct. 790 (1986) (securities brokerage), appellee's petition for cert. granted, 54 U.S.L.W. 3575 (March 3, 1986) (branching) (“Security Pacific”). See also Securities Industry Association v. Board of Governors of the Federal Reserve System, 468 U.S. 207, 104 S.Ct. 3003 (1984) (“Schwab”) (bank holding company affiliates). The riskless principal activities of Company will be limited to purchases and sales of securities “without recourse” to the Bank or Company, and “solely upon the order, and for the account” of Company's customers and thus, are permitted under the statute.

1. Without Recourse

The without recourse phrase is directed against contracts “by which the bank assumes the risk of loss which would otherwise fall on the buyer of securities or undertakes to insure to the seller the benefit of an increase in value of securities which would otherwise accrue to the bank.” Awotin v. Atlas Exchange National Bank, 295 U.S. 209, 212 (1935). See Securities Industry Association v. Board of Governors of the Federal Reserve System, 716 F.2d 92, 100 n. 4 (2d Cir.1983) (affirming, In re BankAmerica Corp., 69 Fed.Res.Bull. 105, 115 n. 50), aff'd, 104 S.Ct. 3003 (1984). The ordinary commercial meaning of without recourse indicates that section 16 prohibits a bank from assuming the liability of endorser or

maker with respect to the securities bought or sold as agent of the customer. Security Pacific, 577 F.Supp. at 257. See New York Stock Exchange v. Smith, 404 F.Supp. 1091, 1097 (D.D.C.1975), vacated as not ripe for review sub nom. New York Stock Exchange v. Bloom, 562 F.2d 736 (D.C.Cir.1977) ("NYSE"); Decision of the Comptroller of the Currency Concerning an Application by American National Bank of Austin, Texas, to Establish an Operating Subsidiary to Provide Investment Advice, dated September 7, 1983, [1983–84 Transfer Binder] Fed. Banking L.Rep. (CCH) ¶ 99,732 at 87,179 ("American National Decision").

In the present case, Company is acting without recourse because it will be conducting its activities only as riskless principal, and therefore, will not assume any customer's risk of loss or any liability as guarantor or endorser of the value of securities to its customers. As in the case in Schwab, Company will not have any contracts whereby it will assume its customers' risks.

Company, however, will assume the responsibilities and obligations normally assumed by a securities broker. If a customer of Company in a riskless principal transaction fails to make payment or deliver securities due at settlement, Company, under its contractual obligation, will be required to carry out the transaction for the other customer. However, courts have determined that this risk that a broker may become an inadvertent principal due to the failure by one of its customers does not make the broker's activities with recourse. Schwab, 716 F.2d at 100 n. 4; Security Pacific, 577 F.Supp. at 257.

Thus, Company's brokerage activities as riskless principal comply with section 16's requirement that its transactions be without recourse, because Company does not assume any risk or liability as endorser or guarantor of the securities, and because Company will have the rights of recourse that are available, generally, to an agent against a customer that fails to deliver cash or securities at settlement.2

2. On the Order and for the Account of Customers

Transactions are on the order and for the account of the customer when no sales or purchases are executed unless directed by the customer and the customer has full beneficial ownership of the securities. NYSE, 404 F.Supp. at 1097. Company's activities will be on the order and for the account of customers because Company will execute a transaction only after it has received a firm order from customers on each side of the transaction. Company will not maintain an account for the purchase and sale of securities on its own behalf, and Company will in no case initiate an order or hold the securities for its own account.

In addition, as a riskless principal, Company will not assume any risk of loss, and thus, will have no beneficial ownership in the securities. Market risk (the risk that the value or price of the stock will fall) and issuer risk (the risk that the inherent value of the stock will be diminished because the issuer's economic prospects have declined) are assumed by a principal that holds the stock in inventory for future resale. Company will not assume any risk because it will carry no permanent inventory and will always conduct simultaneous offsetting transactions for each purchase and sale of securities. Thus, the customers of Company always will have full beneficial ownership of the securities because they will assume all the risk of gain or loss on the securities and Company will assume no such risk.

The fact that Company will conduct transactions with the Foreign Securities Subsidiaries raises no questions under section 16. The OCC previously has recognized that a bank brokerage subsidiary may execute transactions with an affiliate engaged in permissible activities under the national banking laws, and that this relationship is permissible under the Glass-Steagall Act. American National Decision. The Foreign Securities Subsidiaries currently are permitted by relevant laws to buy and sell foreign securities in which they make a market in Europe and, in addition, sell or buy the same securities in the U.S. through U.S. registered broker-dealers.

Company's obligations in this case as a registered NASD market maker do not affect Company's activities under the Glass-Steagall Act. Although Company is required to hold itself out as being willing to buy or sell securities, Company will incur this obligation, i.e., act as a "market maker" for purposes of NASD rules, only in those securities in which it will always have an offsetting order from a Foreign Securities Subsidiary. If Company should ever receive an order in such a security which exceeds the orders placed by the Foreign Securities Subsidiaries and the bid and ask quotations entered by Company, it will have no legal, regulatory, or contractual obligation to execute these excess orders.

Thus, Company will always conduct its activities in those securities in which it is an NASD market maker in a manner consistent with section 16, i.e., as a riskless principal. Of course, in order for Company to operate as a market maker in a manner consistent with its authority to act as a riskless principal, Company may in no event enter an offer to buy or sell a security, whether as market maker or otherwise, unless Company also has a firm offsetting order from a third party that will enable Company to maintain its riskless principal status.

Accordingly, Company's activities as a riskless principal are permissible activities under the express terms of section 16 of the Glass-Steagall Act in that Company will always conduct trades without recourse and on the order and for the account of customers and not for its own account.3

B. Brokerage As Riskless Principal Is Equivalent To Brokerage As Agent Permissible Under The Act

A broker, acting as agent, effects transactions in securities for the account of others and does not buy or sell securities for its own account. A broker who acts as agent does not carry any inventory of securities and does not assume any market or issuer risk. On the basis of the facts presented, Company clearly will be conducting itself as the legal and economic equivalent of a broker acting as agent, which has been determined by case law to be permissible under the Glass-Steagall Act. Company will not carry any inventory of securities because Company will only conduct its activities as riskless principal. It will buy or sell securities only if it can conduct a simultaneous offsetting sale or purchase of the securities. In addition, Company will be compensated in the exact same manner as an agent, in that it will receive commissions rather than a dealer's mark-up that is usually associated with the assumption of market or issuer risk.

From a legal perspective, Company's obligations and contractual agreements with the Foreign Securities Subsidiaries make Company subject to only those risks assumed by a broker acting as agent. The U.S. Supreme Court analyzed the risks incurred by a broker acting as agent as follows:

> As underwriter and dealer, the firm buys and sells securities on its own account, thereby assuming all risk of loss. As broker, the firm buys and sells securities as an agent for the account of customers. In these transactions, it is the customer, rather than the securities firm, who bears the risk of loss.
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> Schwab, 104 S.Ct. at 3010 n. 18.

Similarly, the customers of Company will bear the risk of loss, rather than Company. With respect to foreign securities and ADRs as to which Company is a registered NASD market maker, Company will only enter bid and ask quotations in the NASDAQ System (or other over-the counter listings) after receiving firm orders from the Foreign Securities Subsidiaries. Hence, any purchase or sale order received by Company for a security in which Company acts as a “market maker” will already be matched by an offsetting order from a Foreign Securities Subsidiary. In those cases where Company receives an order for such a security which exceeds those placed by the Foreign Securities Subsidiaries, Company will be under no legal, regulatory or contractual obligation to execute the order for the excess amount. See n. 1 supra.

For those securities in which Company is not a market maker under NASD rules, Company need not, and will not, execute a purchase or sale transaction, unless it can simultaneously effect an offsetting transaction.4 In case of a fail by the Foreign Securities Subsidiary, Company is authorized to instruct officers of Corporation to transfer sufficient funds to complete the transaction. If a U.S. customer of Company should fail to deliver cash or securities at the time of settlement, the Foreign Securities Subsidiary will agree to take back its securities and will bear any market risk that may have occurred during the time that Company had custody of the securities. Thus, in all cases Company is insulated to the same extent as a broker acting as agent from any market or issuer risk that may occur.

In sum, riskless principal activities are the legal and economic equivalent of permissible agency brokerage activities inasmuch as riskless principal brokerage is conducted in a manner consistent with

the express terms of section 16. This position is in accord with the SEC and the Federal Reserve Board positions which have recognized the agency nature of “riskless principal” activities and have treated such activities as agency transactions. The SEC has stated that riskless principal transactions “are in many respects equivalent to transactions conducted on an agency basis”. Securities Exchange Act Release No. 15219, [1978 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 81,746 at 80,970 (Oct. 6, 1978). The Federal Reserve Board, in approving BankAmerica Corporation's acquisition of Charles A. Schwab & Co., stated, “[I]n infrequent cases, Schwab may purchase municipal securities in a new issue as riskless principal—with its own assets but only after a firm customer order for such securities has been received. These riskless principal transactions (also not a principal activity of Schwab) appear to be consistent with permissible brokerage activities....” In re BankAmerica Corp., 69 Fed.Res.Bull. 105, 116, n. 55 (1982) (emphasis supplied).

C. Brokerage As Riskless Principal Is Not Prohibited By Other Glass-Steagall Considerations

Because the activities of Company are authorized by the plain language of the section 16 of the Act, the consideration of the “hazards” against which the Glass-Steagall Act is directed, as enunciated by the Supreme Court in Investment Company Institute v. Camp, 401 U.S. 617 (1971), is not necessary.5 However, a review of Company's activities reveal that none of these hazards exist.

Company will not maintain any securities for its own account and therefore, will not assume any risks that arise when a dealer or underwriter invests in securities. The Supreme Court in Schwab noted:

> None of the more “subtle hazards” of underwriting identified in Camp is implicated by the brokerage activities in issue here. Because Schwab trades only as agent, its assets are not subject to the vagaries of the securities markets. Moreover, Schwab's profits depend solely on the volume of shares its trades and not on the purchase or sale of particular securities. Thus, [BankAmerica Corporation] has no “salesman's stake” in the securities Schwab trades. It cannot increase Schwab's profitability by having its bank affiliate extend credit to issuers of particular securities, nor by encouraging the bank affiliate to favor particular securities in the management of depositors' assets.
>
> Schwab, 104 S.Ct. at 3011.

As in the case in Schwab, Company trades only as a permissible broker and its assets are not subject to market risk. Company's profits depend solely on the commissions it makes rather than the value of specific securities. The Bank, like BankAmerica Corp. in Schwab, has no salesman's stake in the securities in which Company trades. Thus, the activities of Company do not present any of the hazards that the Glass-Steagall Act was meant to prevent.

II. Research and Investment Advice

In addition to its brokerage activities, Company will provide to its U.S. customers investment advice on foreign companies and foreign securities. The research and advice is produced in-house by Company or obtained for a fee from the Foreign Securities Subsidiaries.

Institutional customers receive advice from Company through periodic mailings of written material and over the telephone. Company has no discretionary accounts. Therefore, all decisions whether to buy or sell a particular security are made solely by the customer. Company's only compensation for the advisory services it renders is in the form of brokerage commissions. Company does not presently intend to charge separately for investment advisory services but may implement a separate charge at some time in the future.

A bank's provision of research and investment advice in conjunction with its brokerage service is permissible under the Glass-Steagall Act if no sales or purchases are executed unless directed by the customer, and the customer has full beneficial ownership of the securities. NYSE, 404 F.Supp. at 1097; American National Decision, ¶ 99,732 at 87,183. In the present case, Company's customers will make all investment decisions concerning the purchase or sale of securities. Company will maintain no discretionary accounts and will execute transactions only after receiving firm offsetting orders.

Therefore, the provision of research and investment advice by Company is permissible under the Act.

III. Branching

Company's operations are currently conducted in New York, New York, which is a permissible location under the branching restrictions of the McFadden Act, 12 U.S.C. § 36. Company also maintains an office in Los Angeles, California, at which it conducts sales activities on behalf of the New York office but does not execute securities transactions.

This Office notes that in Security Pacific, supra, the Court of Appeals affirmed the district court's decision holding that discount brokerage activities are legitimate bank activities subject to the branching restrictions of 12 U.S.C. § 81 and 12 U.S.C. § 36 and, therefore, unavailable at non-branch locations. The Office filed a petition for certiorari with the Supreme Court seeking review of, among other things, the Court of Appeal's decision on the branching issue. This petition was granted on March 3, 1986. We are, however, cautioning national banks intending to conduct brokerage activities at non-branch locations about the Court of Appeal's decision. If this decision is affirmed, banks will be required to restrict their securities brokerage activities to their main office or to branch locations. In this regard, however, the Bank states that it will take such steps as are necessary to comply with existing law and future developments.

CONCLUSION

This Office has carefully considered the legality of the activities proposed by the Bank for Company. For the reasons presented above, this Office concludes that these activities are legally permissible under the Glass-Steagall Act and the Bank may proceed with its acquisition. Our opinion is limited to the activities discussed in this letter and the Bank's Notification. Any expansion of the Parent's or Company's activities beyond those discussed will require a separate notification pursuant to 12 C.F.R. § 5.34(d)(1)(i). We reserve the right to monitor the activities of the Bank and Company to ensure their adherence to applicable legal requirements, and to modify our position on the basis of our monitoring activities, or as future legislative, regulatory or judicial developments warrant. Our position is based strictly on the facts presented above; any deviation in the Bank's or Company's activities from those facts may require a different conclusion. Moreover, our conclusion is premised on compliance by the Bank and its affiliates with all applicable U.S. and foreign legal and regulatory requirements.

Very truly yours,

Judith A. Walter
Senior Deputy Comptroller for National Operations

Footnotes

1 As a NASDAQ market maker, Company is subject to a variety of regulatory requirements in its market making activities, including applicable NASD rules and other federal securities regulatory requirements. As a general rule, a registered NASDAQ market maker which receives a buy or sell order must execute a trade for a normal trading unit (which for common stock is usually 100 shares unless otherwise indicated) at the price quoted by the market maker at the time the order is received. NASD By-Laws, Schedule D, Section I.C. Moreover, price quotations by market makers must be “reasonably related to the prevailing market”. Id. If an order is received for an amount in excess of the trading unit quoted, however, a market maker is under no obligation to execute that order for the excess amount. Further, a registered market maker has no affirmative obligation to maintain a fair and orderly market. Moreover, there is no statutory or regulatory requirement which obligates a market maker to inventory securities, subject to market or issuer risk, in order to qualify as a market maker in those securities.

2 As noted at pages 3 through 4, Company's contractual arrangements with the Foreign Securities Subsidiaries will protect Company should a U.S. customer or a Foreign Securities Subsidiary fail to settle a trade. Thus, in those instances, Company will have an additional level of protection against becoming an inadvertent principal, even though the possibility that a broker may become an inadvertent principal is permissible under section 16 of the Glass-Steagall Act.

3 Riskless principal brokerage is also not prohibited by section 21 of the Glass-Steagall Act; as determined in Security Pacific, brokerage without recourse, on the order and for the account of customers is permissible under section 16 and not prohibited by section 21 of the Act. Security Pacific, 577 F.Supp. at 254–257. Cf. Schwab, 104 S.Ct. at 3012 (section 20).

4 In those cases in which Company is not an NASD market maker, Company has no obligation to accept and execute an order inquiry placed by a U.S. customer.

5 Cf. Board of Governors of the Federal Reserve System v. Investment Company Institute, 450 U.S. 46 (1981), in which the Supreme Court stated that a bank holding company affiliate may operate as an investment adviser to a closed-end investment company because this activity was, among other things, permissible under the language of the Glass-Steagall Act. The Court rejected arguments by the ICI that such activities were nonetheless impermissible because they raise the hazards enunciated in the Supreme Court's decision in ICI v. Camp.

INCOMING LETTER

Richard G. Ketchum, Esq.
Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Dear Mr. Ketchum:

On behalf of Citicorp, I am writing to supplement our letters of April 2 and June 17, 1986, requesting assurance that the staff will not recommend enforcement action to the Commission if certain of Citicorp's direct or indirect foreign subsidiaries (“Foreign Securities Subsidiaries”)1 do not register in the U.S. as either broker-dealers or investment advisers under the circumstances described in our April 2 letter, as supplemented by the discussion in this letter. In response to certain questions from the Staff concerning Citicorp's proposal, we respectfully submit the following clarifications with respect to the manner in which the activities of the Foreign Securities Subsidiaries and Vickers da Costa Securities, Inc. (“Vickers NY”), a registered broker-dealer, will be conducted.

First, Citicorp wishes to advise the Staff that the orders placed by the Foreign Securities Subsidiaries for execution by Vickers NY will contain information permitting Vickers NY to determine whether transactions entered into with a Foreign Securities Subsidiary are for the Foreign Securities Subsidiary's own account or placed on behalf of a customer of the Subsidiary.2 Vickers NY will reflect this information in its records.

Second, should the Commission, in furtherance of its statutory responsibilities, request information with respect to any trading activity involving a customer of a Foreign Securities Subsidiary in a transaction with Vickers NY, Citicorp will (1) cause the Foreign Securities Subsidiary to furnish its basic trading data relating to any such transaction and (2) use its best efforts to obtain, or to cause the appropriate Foreign Securities Subsidiary to obtain, the consent of such customer authorizing the Foreign Securities Subsidiary to provide additional requested information to the Commission. In addition, prior to the commencement of the proposed activities, Citicorp will cause Citibank, N.A., Attention: General Counsel's Office, 399 Park Avenue, New York, New York 10043, to be designated as an agent upon whom may be served any process, pleadings or other papers in any investigation, administrative proceeding, civil suit or other action brought by or on behalf of the Commission, or to which the Commission is a party, arising out of any activity occurring in connection with a transaction involving a Foreign Securities Subsidiary. In undertaking to designate Citibank, N.A. as an agent for service of process, it is understood that Citicorp does not waive or compromise any defense that a Foreign Securities Subsidiary or any of its customers may have to a claim asserted by the Commission. Moreover, the ability of a Foreign Securities Subsidiary to respond to U.S. process may be subject to its

obligations under foreign law, including its duty of confidentiality to its customers. It should be noted that the regulatory concerns addressed by this paragraph presently exist with respect to all foreign customers of foreign broker-dealers executing transactions through U.S. broker-dealers. Citicorp's undertaking would provide more protection against potential abuses by such customers than is available under ordinary circumstances.

Third, the Staff has requested additional information in connection with its consideration of the financial responsibility requirements appropriate to the proposed activities of Vickers NY. In response to these requests, we have attached a copy of Vickers NY's FOCUS Report, Part I for the period March 1986 to June 1986, together with turnover data for the month of June 1986. With respect to the information on "total tickets" contained in line 33 of the attached FOCUS Report, Vickers NY has informed us that 1,250 of such tickets for the month of June relate to Level 3 market making activity.

Citicorp wishes to confirm that Vickers NY will maintain its net capital pursuant to the requirements of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended (the "Act"). In addition, in response to suggestions made by the Staff, Vickers NY will make the following additional net capital computation: Vickers NY will calculate the aggregate net contract amounts between the date of execution and the day preceding the regular way settlement date of all transactions in securities which have been executed on the order of Foreign Securities Subsidiaries, adjusted by adding as a debit the market value of all short positions in such securities and by deducting as a credit the market value of all long positions in such securities. If the foregoing computation results in a net debit, such debit, plus an amount equal to 2% thereof, shall be applied as a reduction of net capital. If the computation results in a credit, such credit balance shall be ignored for purposes of net capital computation.

The special computation described above would not be reported on Vickers NY's FOCUS Reports but, instead, would be reported to the Staff of the Division of Market Regulation and to the National Association of Securities Dealers, Inc. on a periodic basis corresponding to the quarterly filing requirements for FOCUS Reports. In addition, it is Citicorp's policy periodically to review the capital and liquidity positions of Vickers NY as well as all of Citicorp's Foreign Securities Subsidiaries, in order to assure that these subsidiaries conduct their activities in accordance with the highest commercial standards.

Fourth, the Staff has asked us to clarify the arrangements between each Foreign Securities Subsidiary and Vickers NY designed to ensure the satisfaction of the obligation of the Foreign Securities Subsidiary to make funds available for settlement of transactions executed by Vickers NY. The Foreign Securities Subsidiary will authorize Vickers NY to give instructions to Citibank, N.A. to debit the account of the Foreign Securities Subsidiary on the order of Vickers NY and credit the account of Vickers NY in an amount sufficient to ensure that funds are available to Vickers NY on settlement date.

Fifth, we wish to clarify the manner in which Vickers NY will establish prices reflected in quotations entered by it on NASDAQ Level 3. Our April 2 letter may be read to suggest that the Foreign Securities Subsidiary, and not Vickers NY, has authority to set the actual prices at which orders are executed. This is not, in fact, the case. Under the contractual arrangements to be entered into between Vickers NY and each Foreign Securities Subsidiary, orders for the Foreign Securities Subsidiary's principal account will be placed and executed as follows:

Once each week, before the opening of trading in the U.S. markets, a Foreign Securities Subsidiary (which, it is anticipated, will generally be Vickers da Costa Ltd.) will place with Vickers NY both bid and asked orders for each security in which Vickers NY is a NASDAQ Level 3 riskless principal market maker. These orders, required always to be in a size sufficient to permit Vickers NY to satisfy its obligations as a Level 3 market maker, will be placed on a "not held" basis, permitting Vickers NY to execute such orders as it deems appropriate in the customer's best interest. Each such buy or sell order will contain broad parameters (which will be either 10% of the market price as of the immediately preceding close or $2, whichever is greater) within which Vickers NY is permitted to establish the prices at which orders will be executed. Moreover, in contrast to an earlier description, the contractual agreement will not permit the Foreign Securities Subsidiary to alter these orders. However, in response to significant market changes, Vickers NY will request additional instructions from the Foreign Securities Subsidiary, including revised parameters if appropriate. Specific prices at which these orders will be executed by Vickers NY as riskless principal will be established solely by Vickers NY, consistent with its obligation to provide best

price and execution to all of its customers. Thus, Vickers NY will continue to have the same prerogatives and responsibilities with respect to setting prices and executing transactions that it has now in executing trades; the role of the Foreign Securities Subsidiaries in such matters will be substantially the same as at present.

It is specifically understood that Vickers NY will continue to treat Foreign Securities Subsidiary agency orders (that is, orders placed by a Foreign Securities Subsidiary acting in an agency capacity) as it does at present, and that such orders are not subject to the limitations described in the preceding paragraph.

Vickers NY expects to maintain telephone contact over a direct line with each Foreign Securities Subsidiary during the period when the business hours of Vickers NY and the Foreign Securities Subsidiary overlap. During this period, Vickers NY will advise the Foreign Securities Subsidiary about the status of such Subsidiary's buy and sell orders and will exchange current market information. After the close of business abroad, Vickers NY may, from time to time, telephone or be contacted by employees of the Foreign Securities Subsidiary (who will typically be at their homes) to discuss the status of the Foreign Securities Subsidiary's buy and sell orders placed with Vickers NY and to exchange current market information. No employee of Vickers NY will be permitted to engage in market making abroad on behalf of a Foreign Securities Subsidiary at the same time that such employee is also engaged in riskless principal market making on behalf of Vickers NY. Comparable restrictions shall apply to employees of Foreign Securities Subsidiaries.

Finally, we wish to reemphasize the fact that Vickers NY, as a registered broker-dealer and Level 3 market maker, has a clear and unambiguous obligation to fulfill its financial and other commitments to customers. While Vickers NY intends to enter into a contractual agreement with Foreign Securities Subsidiaries designed to meet certain Glass-Steagall requirements, these arrangements are not intended in any way to alter, or to transfer to Foreign Securities Subsidiaries, Vickers NY's ability to satisfy its obligations under the Federal securities laws as a riskless principal market maker. Indeed, the Office of the Comptroller of the Currency did not find, and we do not believe, that the Glass-Steagall Act prohibits Vickers NY from satisfying all of its obligations arising out of its proposed activities as a riskless principal market maker.

We trust that this additional information will enable the Staff to proceed promptly on Citicorp's no-action request. As an alternative to a no-action response, we request that the Staff advise us that it will recommend to the Commission that the Commission, pursuant to Section 15(a)(2) of the Act, exempt the Foreign Securities Subsidiaries from the application of the registration requirements of Section 15(a) of the Act.

For the reasons set forth in our April 2, 1986 letter, we request, pursuant to Rule 200.81(b) of the Commission's Rules of Practice, that this supplemental letter and the attachments hereto and the Staff's response or Commission exemptive order be kept confidential for a period of 120 days from the date of such response or order.

If you have any questions or need any additional information concerning the foregoing please do not hesitate to telephone me at (202) 289–0100.

Sincerely yours,

Marcia L. MacHarg

Footnotes

1 These subsidiaries are Vickers da Costa Ltd. (a U.K. corporation) and its Tokyo branch office, and Vickers da Costa (Hong Kong) Ltd. The proposed activities involving Foreign Securities Subsidiaries will be performed principally in London by Vickers da Costa Ltd.

2 We understand that at present more than half of the transactions between Vickers NY and the Foreign Securities Subsidiaries are for the accounts of the Subsidiaries.