

SEC Staff Provide No-Action Relief Relating to Broker-Dealer Net Capital Requirements

On March 30, 2020, the Securities and Exchange Commission ("SEC") Division of Trading and Markets ("Division") issued a No-Action Letter relating to market practices regarding bank sweep programs [requested](#) by the Securities Industry and Financial Markets Association. Specifically, the No-Action Letter provides that the Division will not recommend enforcement action for non-compliance with broker-dealer net capital requirements with respect to broker-dealers that treat certain receivables resulting from bank sweep programs as "allowable assets" for purposes of the net capital requirements. This post explains the No-Action Letter and related Exchange Act requirements.

Sweep Programs and Net Capital Requirements

A "sweep program," defined by Exchange Act [Rule 15c3-3](#), is a service provided by a broker-dealer where it offers to its customer the option to automatically transfer free credit balances in the customer's securities account to either (a) a money market mutual fund ("money fund") or (b) an account at a bank insured by the Federal Deposit Insurance Corporation ("FDIC"). Certain broker-dealers may offer this service to customers and, when funds are requested by the customer, the broker-dealer will request the funds from the money fund or bank and ultimately transfer the requested amount into the customer account. Often, in order to ensure that the broker-dealer meets the timing of the customer's request to withdraw or otherwise use those funds, the broker-dealer pre-funds the customer's brokerage account before the amount has been transferred to the broker-dealer from the bank or money fund. A broker-dealer's prefunding of customer funds creates a receivable owed to the broker-dealer, which must be accounted for in its net capital calculations under Exchange Act rules. Exchange Act [Rule 15c3-1](#) requires every broker-dealer to at all times maintain a minimum net capital whereby its debt does not exceed a certain amount in relation to its net capital and, as a component of that calculation, provides that a broker-dealer must deduct unsecured receivables from its net worth when measuring net capital.

Receivables from Bank Sweep Accounts Are "Allowable Assets"

The No-Action Letter explains that broker-dealers may treat a receivable "as an allowable asset that is not deducted from net worth for net capital purposes under 15c3-1 for one business day from the date the receivable is created," provided that the following conditions are satisfied:

1. A net receivable is created through pre-funding of a customer's brokerage account as part of an FDIC insured bank sweep program transaction;
2. The net receivable arises from a receivable from an FDIC-insured bank for which a sweep program deposit account has been established;
3. The broker-dealer has a legally enforceable right to demand and receive payment of the receivable from that bank; and
4. There is no ability for the customer to access the FDIC insured bank sweep account directly without going through the broker-dealer.

The No-Action Letter does not include a termination date, so broker-dealers should be able to rely on the Division's position even after the COVID-19 crisis abates.

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