

# N.Y. STOCK EXCHANGE

# INFORMATION MEMO

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New York Stock Exchange, Inc.  
55 Water Street  
New York, New York 10041

Division of Member Firm  
Regulatory Services

November 23, 1983  
Number 83-40

ATTENTION: CHIEF EXECUTIVE AND FINANCIAL  
OFFICERS/PARTNERS

TO: MEMBERS, MEMBER ORGANIZATIONS AND  
SUBSCRIBERS

SUBJECT: DEPOSIT AND CAPITAL TREATMENT FOR AT&T  
DIVESTITURE SECURITIES

On September 18, 1983, the Securities and Exchange Commission approved the 100 initial and 7% maintenance deposit requirements contained in Information Memo 83-39 (November 16, 1983).

Recently the Exchange issued Information Memos Number 83-35 (October 28, 1983) and 83-39 (November 16, 1983) outlining the requirements applicable to when-issued transactions in customers' cash and margin accounts. This Memorandum is being issued to address some specific questions on the previous circulars to insure uniform treatment and compliance by all member organizations.

## REQUIREMENTS FOR WHEN- ISSUED CASH TRANSACTIONS

### EXEMPT ACCOUNTS

1. The term "exempt account" is defined in Rule 431(d)(3) and refers to the nature of the institution. Some confusion has arisen because of the special treatment afforded non-exempt institutions dealing in "exempted securities" that have net tangible assets of sixteen million dollars (\$16,000,000) or more. This size test applies in defining an "exempt account" for transactions made in "exempted securities". The AT&T when-issued securities are not "exempted securities".

In addition to pension and profit sharing plans covered by ERISA, pension plans of governmental agencies (e.g. Government of the United States or any state or political sub-division thereof or any agency or instrumentality of any of the foregoing) shall be deemed "exempt accounts" (see Internal Revenue Code Section 414(d)).

2. Attached as Exhibit A is the Exchange prescribed format for Letters of Credit and Deposit Letters to be used to meet the initial and maintenance requirements for “exempt accounts” where a legal impediment exists that would prohibit their depositing cash or securities. Member organizations may include additional privileges or restrictions, however, the requirements contained in the Exchange formats may not be altered or deleted.
- Member organizations should require “exempt accounts” to collateralize Deposit Letters in excess of the amounts required, in order to avoid the need to obtain additional letters should the collateral decrease in value due to market fluctuations or the when-issued transactions require additional deposits. The negotiable and readily marketable collateral supporting these letters must consist of the following or any combination thereof:
    - o Exempted securities
    - o NYSE or AMEX listed securities
    - o Other exchange securities that substantially meet NYSE or AMEX listing requirements
    - o NASD “national list” securities
    - o Bankers acceptances and certificates of deposit issued by U.S. banks
    - o Commercial paper issued by NYSE corporations
  - Letters of Credit should also be issued in amounts in excess of the required deposits to avoid the need to obtain additional letters.
  - Deposit Letters or Letters of Credit issued for “exempt accounts” in connection with transactions when-issued securities are not acceptable if issued by the “exempt account” on its own behalf. All such letters must be issued by a bank or trust company acting in its general capacity. However, if the customer is a bank acting as a fiduciary, or is a trust or custodial account maintained with the bank, the bank acting in its general capacity is eligible to issue such letters for the customer. These letters must be prepared on the bank’s stationery and signed by an authorized person.
  - Where member organizations have accepted Deposit Letters or Letters of Credit to guarantee completion of transactions for “exempt accounts” that have demonstrated a legal impediment to depositing cash or securities, such guarantee must be sufficient to cover both the initial 10% deposit requirement and the 7% maintenance requirement, including marks to market, after deducting from the total value of the securities supporting the guarantee, NYSE maintenance requirements for such securities. For example:

- A. Initial purchase or sale of when-issued securities - \$60,000  
Requirement at 10% \$6,000

Third party bank Deposit Letter secured by acceptable stocks with a current market value of at Least \$8,000

(less NYSE 25% maintenance requirement) = \$6,000

- B. If the above initial purchase declined in value to \$50,000 -

Requirement at 7% of current market value \$ 3,500  
Plus Mark to Market (unrealized loss) \$10,000

Total requirement \$13,500

The third party bank Deposit Letter secured by acceptable stocks would now require additional collateral to bring the current market value to at least \$18,000

(less NYSE 25% maintenance requirement) = \$13,500

3. For the purpose of computing NYSE maintenance requirements for these AT&T when-issued transactions, certificates of deposit, treasury bills and notes, bankers acceptances and the first and second highest rated commercial paper shall be subject to a 5% maintenance requirement. Thus, in example 2A above, to meet a \$6,000 initial requirement, a deposit of these financial instruments must have a current market value of at least \$14,300 (\$14,300 less 5% = \$13,585).
4. Where an “exempt account” sells any of the when-issued securities, and the member organization does not have physical possession of the underlying securities, then the account is subject to the 10% initial deposit requirement and the 7% minimum maintenance requirement (including marks to market). Acknowledgement from the “exempt account” that they have the underlying security will not reduce or eliminate these requirements.
5. The Exchange will not object to member organizations that have received direct deposits from exempt accounts returning to the exempt accounts, deposits in excess of the 10% requirement that may become available due to fluctuations in the when-issued positions. For example:

A.	Initial purchase of when-issued securities - \$60,000		
	10% Requirement (which is deposited in cash)		<u>\$6,000</u>
	When-issued securities appreciate to a current market value of \$65,000. Requirement is (10% of \$65,000 less \$5000 unrealized profit)	=	\$1,500
	Excess cash available and withdrawable		<u>\$4,500</u>
B.	Same initial purchase as 5A above, requirement	=	\$6,000
	When-issued securities appreciate to a current market value of \$70,000. Requirement is (10% of \$70,000 less \$10,000 unrealized profit)	=	<u>- 0 -</u>
	Cash available for withdrawal		<u>\$6,000</u>

The excess equity over the \$6,000 cash deposit of \$3,000 may not be withdrawn, but may be used to offset requirements on any other when-issued AT&T security transaction made.

The same procedure applies to sales of AT&T when-issued securities when market fluctuations reduce the current market value of the security below the when-issued contract price.

The Exchange will not object to member organizations crediting interest to exempt accounts that deposit cash to meet requirements.

6. All when-issued positions in an account must be taken into consideration before any funds may be released to the “exempt account.” No payments may be made unless the equity remaining in the account is sufficient to meet the initial 10% requirement on all other AT&T when-issued positions still in the account, despite the fact that the “exempt account” is in compliance with the 7% maintenance requirement.
7. Member organizations that have satisfied themselves that an “exempt account” will comply with the initial and maintenance requirements may request “extensions of time” on behalf of an “exempt account.” An “extension of time” will not permit the member organization to use the lower capital charges as shown in Exhibit A in Information Memo 83-39.

On initial deposit requirements, extensions are due seven (7) business days after trade date. On maintenance requirements, extensions are due seven (7) business days from the date the account went below the 7% maintenance requirement (which date, for extension purposes, will be deemed to be the trade date for preparing appropriate extension forms).

All requests for extensions on “exempt accounts” must be prepared on NYSE Form #13-175, and received by the Exchange on the seventh (7th) business day after trade date or the date on which any previous extension request expired. Two extensions will be permitted for each exempt account.

Extension requests must be applied for under Code 21 (other reasons) and state “NYSE requirement for AT&T when-issued transaction.” By adherence to this procedure, these extensions will not be recorded against the “exempt accounts” records, however, the Exchange will be able to appropriately monitor these requests.

8. In computing the 7% maintenance requirement all AT&T when-issued positions in the account are to be considered. Unrealized profit in one position may be used to offset an unrealized loss in another position.

Each new transaction shall be subject to the 10% initial requirement. However, the 10% initial requirement on the new transaction may only be reduced by that amount the equity in the account exceeds the 10% requirement on all other when-issued positions after adjusting the equity for all unrealized profits and losses.

#### NON-EXEMPT ACCOUNTS

1. Due to the unusually long when-issued period, the Exchange has determined that the \$5 per share or 30% of the market value margin requirement must be obtained from all non-exempt accounts on net short when-issued contracts when the underlying securities are not physically held by the member organization. Notification to the member organization that the customer owns the underlying security will not exempt the customer from margin requirements, therefore, the provisions contained in Information Memo 83-35 under Item 2 (Cash Accounts) and the Interpretation Handbook at page 4340 are not appropriate for AT&T when-issued transactions.
2. All initial or maintenance margin requirements must be obtained within five (5) business days of trade date or the date the account went below maintenance requirements. Only cash or securities may be accepted to meet these requirements. Compliance with Rule 431 is mandatory, therefore, Letters of Guarantee and Deposit Letters permitted to be used for exempt accounts are not acceptable.
3. No “extensions of time” may be requested for non-exempt accounts.

Member organizations should encourage customers to deposit the underlying securities with them, thus creating equity in the account that may be used against the 25% requirement and subsequent marks to market. The Exchange will not object to member organizations crediting interest to those non-exempt accounts that deposit cash to meet the requirements.

### CAPITAL COMPUTATIONS

1. With reference to Exhibit A of Information Memo 83-39, the deficit charges are progressively applied; the 100% charge (Item 3.b) only applies to total deficits in all accounts (less deficits already charged) over 100% of excess net capital.
2. In computing deficits to be considered for an individual exempt account, all positions in AT&T divestiture securities should be marked to market and netted together. Thus, a deficit in one issue may be reduced by the profit on another issue in the same account.
3. While, the acceptance of a Letter of Credit to cover deposit requirements (initial, maintenance and marks to market) in an exempt account will relieve the broker/dealer of the requirement to demand cash or securities collateral, it will not reduce the capital charge for deficits computed under Exhibit A (see Information Memo 83-39). Thus, where exempt customers deposit a Letter of Credit to cover the deficit, the capital charge would still be the same. A Letter of Credit taken to cover the 10% initial deposit requirement, however, would not cause a charge under SEC Rule 15c3-1(c)(2)(xii).
4. A satisfactory escrow-agreement may be included as if the securities were under the possession of the broker/dealer for purposes of Rule 431. The calculation of requirements is based on Rule 431 and not the haircuts under SEC Rule 15c3-1.
5. In computing haircuts described in Exhibit B (see Information Memo 83-39) mark to market gains and losses are to be considered, except that, gains on “when-issued” marks to market may only be used to reduce the losses and haircuts on AT&T divestiture securities positions. Such gains may not operate to increase net capital. Gains and losses on closed out when-issued positions are treated in the same way.
6. Capital deductions on AT&T covered options and options hedged with options will be treated as in SEC Rule 15c3-1(c)(2)(x) or Appendix A as appropriate. However, options may be hedged with when-issued positions. A long in the money option versus a short when-issued would, after making mark to market adjustments, have a 5% charge on the market values of short “when-issued” positions which would be covered upon exercise of the long option with a 15% charge on the market value of the remaining securities. A long when-issued versus a short in-the-money option would be subject to a 15% charge.

POSSESSION OR CONTROL AND RESERVE REQUIREMENTS

Generally customers' when-issued accounts will have no ledger balance or a credit balance. When this is the case, securities deposited as margin collateral are required to be held in possession or control and credit balances should be included in the reserve formula computation unless the transactions in the account liquidate to a deficit. Where the when-issued security positions

liquidates to a deficit, an adjusted debit balance may be computed (as is presently done in margin accounts) and the broker/dealer may use securities collateral up to 140% of the adjusted debit balance provided a signed hypothecation agreement has been received from the customer.

Questions on this Information Memo relative to margin requirements should be directed to Mr. Richard Nowicki (212) 623-7683 or Mr. Steven Levine (212) 623-7080; questions on capital and possession or control requirements should be directed to Mr. Mel Nadler (212) 623-6934 or Mr. Martin Hobby (212) 623-6944.

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David Marcus  
Senior Vice President

FORM OF NYSE  
AT&T DIVESTITURE STOCKS  
DEPOSIT LETTER

[Bank Letterhead]

\_\_\_\_\_  
(Date)

To: \_\_\_\_\_  
(New York Stock Exchange Member Organization)

The undersigned bank (the Bank), having an office located at \_\_\_\_\_  
\_\_\_\_\_, hereby certifies and warrants to you  
that:

- (i) it is a bank or trust company, doing business in corporate form and organized under the laws of the United States or any State thereof, and is supervised and examined by Federal or State authorities having supervision over banks or trust companies;
- (ii) as custodian, it has on deposit in the United States for the account of \_\_\_\_\_ (the Customer) cash in the amount of U.S.\$\_\_\_\_\_ (the Deposited Cash) and the securities whose identities, maturities (if applicable) and quantities are listed in Schedule A (the Deposited Securities) (collectively, the Deposit); [<sup>\*</sup>]

\_\_\_\_\_  
[<sup>\*</sup> The member organization and the custodian bank may provide that, in place of identifying the Deposited Securities, the custodian bank certifies to the market value of the Deposited Securities after deducting the appropriate percentages of market value equal to the applicable NYSE maintenance requirements. In that case, the Deposit Letter must provide for daily marking to the market by the custodian bank and for prompt notification to the member organization of any shortfall.]



- (iii) each Deposited Security is readily marketable and is
  - (a) a stock or a convertible debenture (1) registered or admitted to unlisted trading privileges on the New York Stock Exchange, Inc. (the NYSE) or the American Stock Exchange, Inc. (the AMEX), (2) registered or admitted to unlisted trading privileges on any other national securities exchange and substantially meeting the original listing requirements of the NYSE or the AMEX or (3) a “NASDAQ security” that (A) substantially meets each of the criteria set forth in paragraph (b)(4)(i) or (ii) of Rule 11Aa2-1 under the Securities Exchange Act of 1934, as amended, (the Act) and (B) is subject to reporting of its transactions pursuant to an “effective transaction reporting plan” as defined in Rule 11Aa3-1 under the Act,
  - (b) a bond issued by the issuer of any security described in paragraph (iii)(a),
  - (c) commercial paper issued by an issuer of any stock registered on the NYSE,
  - (d) an exempted security, as that term is defined under section 3 of the Act, or
  - (e) a negotiable bank certificate of deposit or bankers acceptance issued by a banking institution in the United States and payable in the United States, or in foreign currency that is immediately convertible without any restrictions or delays into United States Funds;
- (iv) Deposited Securities that are not being held in [ ]-entry form are being held by the Bank either in bearer form or in registered form, registered in the name of the Bank or its nominee (or are accompanied by such assignments and documents of transfer as are necessary in order to enable the Bank to so register them at any time); and
- (v) the Bank has received specific authorization from the Customer to issue this Deposit Letter and to hold the Deposit pursuant to the provisions hereof in respect of the Customer’s purchases and sales of one or more AT&T Divestiture Stocks on a “when-