

AUG 10 1978

Mr. Robert D. Kane

Vice President & Controller

Smith Barney, Harris Upham & Co.,

120 Broadway New York, New York 10005

Dear Mr. Kane:

In your letter of July 12, 1978, you request an interpretation on behalf of Smith Barney, Harris Upham & Co. Inc. ("Smith") as to whether the cash surrender value of "split dollar" life insurance coverage to certain senior officers would be required to be deducted from net worth in determining net capital pursuant to Rule 15c3-1 under the Securities Exchange Act of 1934.

We understand the pertinent facts to be as follows:

Smith provides "split dollar" life insurance coverage to certain senior officers and has recorded the accumulated cash surrender value ("CSV") as an asset on its books; Smith owns the policy and the related CSV; the officer has designated a beneficiary who would receive the face amount of the policy less the CSV in the event of the officer's death; such payment would be made directly to the beneficiary by the insurance company; in the event of the officer's death, the firm would receive a death benefit equal to the CSV; such payment would become directly to Smith by the insurance company; Smith can terminate the policy at its discretion and return it to the insurance company, in exchange for the insurance company paying Smith the CSV.

Subparagraph (c)(2)(iv) requires that a broker or dealer, in determining net capital, deduct from net worth assets which cannot be readily converted into cash including the CSV of a life insurance policy, unless such CSV and the face amount of such policy are payable to the broker-dealer, if a partnership or corporation.

It is the view of the Division that the CSV of a "split dollar" life insurance policy recorded as an asset on the books of Smith would not be required to be deducted from net worth in determining net capital provided such asset is readily convertible

into cash and is payable directly to Smith in the event of the death of the insured or the termination of the policy by Smith.

If you have further questions, please contact us.

Sincerely,

Gary Millar

Staff Accountant

SMITH BARNEY, HARRIS UPHAM & CO. INCORPORATED 120 BROADWAY NEW YORK,  
N.Y. 10005 (212) 344-7000

July 12, 1978

Securities and Exchange Commission 500 North Capitol St., NW Washington, DC  
20549

Attention Mr. Gary Miller

Gentlemen:

We presently provide "split-dollar" life insurance coverage to certain senior officers, which is structured as follows:

1. Smith Barney, Harris Upham ("the firm") owns the policy and the related cash surrender value.
2. The officer designates a beneficiary who would receive the face amount of the policy less the cash surrender value, in the event of the officer's death. Such payment would be made directly to the beneficiary by the insurance company.
3. In the event of the officer's death, the firm would receive a death benefit equal to the cash surrender value. Such payment would be made directly to the firm by the insurance company.
4. The firm can terminate the policy at its discretion and return it to the insurance company, in exchange for the insurance company paying the firm the cash surrender value.

In accordance with generally accepted accounting principles, the firm has recorded the accumulated cash surrender value to date as an asset on its books.

Such asset is readily convertible into cash, as previously described, and therefore should be allowable as net capital. However, an S.E.C. staff interpretation published by the N.Y.S.E. (No. 76-4, April 30, 1976) appears to preclude such favorable net capital treatment. The interpretation states that the face amount of the policy must be payable to the broker-dealer. Under our policies, the insurance company would pay the respective face amounts to both the firm and the beneficiary.

We trust that we are misinterpreting the staff interpretation, and that the recorded cash surrender values in our case would be allowable net capital. The basis for this premise is that both the cash surrender value and the face amount of the policy related to this cash surrender value are payable directly to the firm by the insurance company.

Enclosed is a copy of one of our policies, the cash surrender value of which was approved by the N.Y.S.E. as allowable net capital prior to the implementation of the Uniform Rule. We respectfully request your approval of the inclusion of these cash surrender values in allowable net capital.

Very truly yours,

Robert D. Kane

Vice President & Controller

CC: E. J. Cummings (N.Y.S.E.)