

STONE & YOUNGBERG

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TELEPHONE(415) 901-1315

November 22, 1977

Mr. George A. Fitzsimmons

Secretary

Securities and Exchange Commission

Washington, D.C. 20549

Re: 17 CFR 24015c 3-1

Dear Mr. Fitzsimmons:

We are writing to request clarification of the definition of aggregate indebtedness contained in the above noted uniform net capital rule for brokers and dealers. We have sought clarification from the NASD, and they have referred us to the Commission.

Our firm is organized as a limited partnership. The general partners own securities which they leave with the firm to use in the ordinary course of business. The firm uses these securities to collateralize firm indebtedness. As we interpret the rule, indebtedness collateralized by partners' securities should not be included in the computation of aggregate indebtedness. Since there seems to be some confusion as to whether this is the Commission's intent through Rule 15c 3-1, we are seeking your clarification.

Our general interpretation of aggregate indebtedness has been that it represents the minimum dollar amount which a broker/dealer would have to pay to settle all liabilities with general creditors. If the firm were to liquidate all its liabilities, for whatever reason, one of the following methods would be used to liquidate the indebtedness collateralized by partners' securities:

1. The firm would satisfy the debt and then return the securities to the partners.
2. The lending institution would liquidate the securities to satisfy the debt whereupon either

- a) The excess securities and/or proceeds would be returned to the partners through the partnership, and the firm would then have a money liability to its partners for the amount credited to the firm in the liquidation by the lender.
- b) The lending institution would become a general creditor of the firm by the amount of the deficiency in liquidation of the collateral, and the firm would have a money liability to the partners for the amount credited to the firm from the liquidation.

In the first case, the firm is left with no liabilities relating to general partners' securities. In the second method, the firm is left with a credit balance of some amount in the account of general partners. Such amounts are specifically excluded from the computation of aggregate indebtedness. In the case of a collateral deficiency, there would be a remaining liability to the lending institution, making it a general creditor of the firm. This is the only situation in which a general creditor of the firm could be created through borrowings collateralized by partners' securities and is one which could be created just as well through a deficiency in the liquidation of proprietary positions to satisfy borrowings against such positions. Indebtedness of the firm which is not adequately collateralized is treated under the rule as aggregate indebtedness, regardless of the nature of the collateral. Having thus covered this situation, it seems clear that adequately collateralized indebtedness secured by general partners' securities would not be included in the computation of aggregate indebtedness as it can lead to no general creditor relationship.

We would appreciate your confirmation and clarification, as needed, regarding our position in this matter.

Very truly yours,

STONE & YOUNGBERG

Edward C. Kern Partner/Controller

cc: National Association of Securities Dealers

San Francisco, California

Mr. Edward C. Kern

Partner/Controller

Stone & Youngberg Investment Securities

One California Street

Suit 2800 San Francisco, California 94111

Dear Mr. Kern:

This is in respect to your letter of received November 25, 1977, on behalf of Stone & Youngberg Investment Securities, requesting a clarification of the definition of aggregate indebtedness (YAI") contained in Rule 15c3-1 (17 CFR 240. 15c3-1 ). You explain that Stone & Youngberg is organized as a limited partnership. The general partner's own securities are left with the firm for use in the ordinary course of business. The firm uses these securities to collateralize firm indebtedness. You question whether such indebtedness collateralized by general partners' securities would be included in the determination of AI. From your letter it appears that these partner's securities have not been contributed pursuant to a partnership agreement, nor are they collateral for a secured demand note. If they have been, the Rule excludes from AI indebtedness secured by such securities.

Paragraph (c)(1) of the Rule defines the term AI to mean the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever. While subparagraphs (i)-(xiii) of paragraph (c)(1) exclude certain indebtedness from the definition of AI, liabilities secured by partners' securities which have not been contributed nor subject to a secured demand note are not so excluded.

Accordingly, it is the Division's view that indebtedness, secured by such securities owned by the partners of the firm shall be included in the determination of AI.

If you have any questions concerning this matter, please contact me.

Sincerely,

Cary C. Miller

Staff Accountant