

April 01, 1986

Antonio J. Santos, Staff Attorney

Division of Market Regulation Securities & Exchange Commission

450 Fifth Street, N.W. Washington, D.C. 20549

Dear Mr. Santos:

This is a request for a no-action position from the Division of Market Regulation ("Division") with regard to the investment of certain "overnight balances" by Summit Corporation ("Summit") and the effect of such investment on the firm's exemption from the reserve formula computational provisions of Securities Exchange Act Rule 15c3-3 (17 CFR 240.15c3-3).

Our objective is to invest the overnight balances in Summit's (k) (2) (A) account in 14-day certificates of deposit in a manner identical to a program outlined by U.S. Boston Capital Corporation in their letter to the Division dated October 2, 1984. Your Division responded with a no-action letter addressed to U.S. Boston dated December 4, 1984. Based on your telephone conversation with Deirdre Noonan of my Office yesterday, the Division's position on this issue has not changed since the granting of that letter and, at your suggestion, I am providing you with the following pertinent facts:

Summit is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD"). The firm introduces, on a fully disclosed basis, its brokerage business with regard to stock and bond transactions. In addition, Summit participates in the sale of investment company shares, direct participation programs and private placements.

Summit operates under the exemption from Rule 15c3-3 provided by paragraph (k) (2) (A) of that rule as to its non-disclosed business. Pursuant thereto, all customer funds received by Summit are promptly deposited into the firm's "Special Account for the Exclusive Benefit of Customers". Summit then forwards such customer funds to the investment vehicles designated by the customer.

Typically, the (k) (2) (A) account has substantial overnight balances (i.e. the amount of money represented by checks drawn on the (k) (2) (A) account and in the process

of collection. The highest recent overnight balance was \$1,408,000 on December 19, 1985. Typically, however, the overnight balances are within the \$300,000 - \$500,000 range.

Summit proposes to buy 14-day certificates of deposits ("CD's") with the overnight balances. The rules governing the CD's to be used allow for early withdrawal with an interest forfeiture penalty on the amount withdrawn. The penalty would be based on the higher of the deposit rate or the current bank rate for a new time deposit of the same term.

The level of overnight balances available to support the purchasing of CD's will be determined by using a 14-day moving average of the most recent account balances. Known factors, based on past experience, will be factored into the determination of available overnight balances. At no time will CD's purchased exceed \$1,000,000. The CD's will be considered part of the Special Account. Of course, restrictions, including those in paragraph (f) of Rule 15c3-3, as to the Special Account must pertain also to the CD's in the account.

One person in our office will be responsible for monitoring the account balance on a daily basis by means of direct communication with the bank. You will note that the account is constantly being credited with wires and checks deposited for new investments enabling the overnight balances to stay at levels high enough to maintain the investments in the CD's and to pay presented checks. Summit will at all times keep no less than \$100,000 of its own funds in the (k) (2) (A) account to ensure payment of presented checks.

Finally, an agreement will be entered into with the bank, in which all the above-mentioned accounts are held, whereby a line of credit will be made available to Summit to prevent any checks drawn on the (k) (2) (A) account from being returned. If, for any reason, the line of credit is not available, the bank will redeem as many CD's as necessary to honor the checks presented.

Thank you for your consideration of this matter. If you require any additional information, please do not hesitate to contact Deirdre Noonan directly at (617) 272-3400.

Very truly yours,

John A. Grant

President

April 22, 1986

Dear Mr. Grant:

This in response to your letter of April 1, 1986, on behalf of Summit Corporation ("Summit"), in which you seek a no action position from the Division with regard to the investment of certain "overnight balances" and the effect of such investment on the firm's exemption from the Reserve Formula computational provisions of Securities Exchange Act Rule 15c3-3 (17 CFR 240.15c3-3).

I understand the pertinent facts to be as follows: Summit is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD"). The firm introduces, on fully disclosed basis, its business with regard to stock and bond transactions. In addition, Summit participates in the sale of investment company shares, direct participation programs and private placements.

Summit operates under the exemption from Rule 15c3-3 provided by paragraph (k)(2)(A) of that rule as to its non-disclosed business. Pursuant thereto, all customer funds received by Summit are promptly deposited into the firm's "Special Account for the Exclusive Benefit of Customers". Summit then forwards such customer funds to the investment vehicles designated by the customer.

You state that, typically, the (k)(2)(A) account has substantial overnight balances. You define overnight balances to be the amount of money represented by checks drawn on the (k)(2)(A) account and in the process of collection. You further state that the highest recent overnight balance was \$1,408,000 on December 19, 1985. Typically, however, the overnight balances are within the \$300,000-\$500,000 range.

Summit proposes to buy 14 day certificates of deposit ("CD's") with the overnight balances. You state that the rules governing the CDs to be used allow for early withdrawal, with an interest forfeiture penalty on the amount withdrawn. The penalty would be based on the higher of the deposit rate or the current bank rate

for a new time deposit of the same term. The level of overnight balances available to support the purchasing of certificates of deposit will be determined by using a 14 day moving average of the most recent account balances. Known factors, based on past experience, will be factored into the determination of available overnight balances. At no time will certificates of deposit purchased exceed \$1,000,000. The CD's will be considered part of the Special Account. Of course, restrictions, including those in paragraph (f) of Rule 15c3-3, as to the Special Account must pertain also to the CD's in the account.

You state that one person in your office will be responsible for monitoring the account balance on a daily basis by means of direct communication with the bank. You state that the account is constantly being credited with wires and checks deposited for new investments enabling the overnight balances, in your opinion, to stay at levels high enough to maintain the investments in the certificates of deposit and to pay presented checks. You further state that Summit will at all times keep no less than \$100,000 of its own funds in the in the (k)(2)(A) account to ensure payment of presented checks. Finally, you state that an agreement will be entered into with the bank, in which all the above mentioned accounts are held, whereby a line of credit will be made available to Summit to prevent any checks drawn on the (k)(2)(A) account from being returned. If, for any reason, the line of credit is not available, the bank will redeem as many CD's as necessary to honor the checks presented.

Based on the above facts and representations, the Division of Market Regulation will raise no question, nor recommend any action to the Commission if Summit invests the overnight balances in its (k)(2)(A) account in 14 day certificates of deposit. You should understand that the position expressed herein is a staff position with respect to enforcement only and does not purport to express any legal conclusion on this matter. The Division's position is necessarily confined to the facts as you have represented them; any material change therein may warrant a different result and should be brought to the Division's attention.

If you have any questions, please contact us.

Sincerely,

Antonio J. Santos Staff Attorney"