



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 30, 2013

Lee A. Pickard
Pickard and Djinis LLP
1990 M Street, N.W. Ste. 660
Washington, D.C. 20036

Re: Carolina Capital Markets, Inc.

Dear Mr. Pickard,

In your letter dated July 26, 2013, you describe institutional asset managers participating in Carolina Capital Markets, Inc.'s (CCM) client commission arrangements. As stated in your letter, under these arrangements, institutional asset managers would receive eligible third-party brokerage and research services based on commissions generated in transactions in fixed income securities effected by CCM on an agency basis, in reliance on the safe harbor of Section 28(e) of the Securities Exchange Act of 1934. Solely with respect to the receipt of eligible third-party brokerage and research services by institutional asset managers in connection with the transactions identified above, the staff of the Division of Trading and Markets will not recommend enforcement action against such institutional asset managers, provided that all applicable conditions of the Section 28(e) safe harbor are met.¹

This staff position concerns enforcement action only and does not represent a legal conclusion regarding the applicability of statutory or regulatory provisions of the federal securities laws. In addition, this response is based strictly on the facts presented and the representations made in your letter, and any different facts or conditions might require a different response. Moreover, we express no view with respect to other questions the proposed activities may raise, including the application of any other federal or state laws or the applicability of any self-regulatory organization rules.

¹ We note that, consistent with Commission guidance, money managers may use client funds to obtain brokerage and research services under this safe harbor in connection with fixed income trades that are executed on an agency basis, provided that all applicable conditions of the Section 28(e) safe harbor are met and the managers and CCM are otherwise complying with the federal securities laws. *See* Securities Exchange Act Release No. 54165, 71 Fed. Reg. 41978, 41980 n.27 (July 24, 2006).

Mr. Lee A. Pickard
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If you have any questions regarding this letter, please call Jo Anne Swindler, Assistant Director, or me at (202) 551-5550.

Sincerely,

A handwritten signature in black ink that reads "David W. Blass". The signature is written in a cursive style with a long horizontal line extending to the right.

David W. Blass
Chief Counsel

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July 26, 2013

David W. Blass
Chief Counsel and Associate Director

Jo Anne Swindler
Assistant Director

Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Blass and Ms. Swindler:

The purpose of this letter is to request that the Division of Trading and Markets confirm that the Division will not recommend enforcement action to the Securities and Exchange Commission (“SEC” or “Commission”) against institutional asset managers participating in Carolina Capital Markets, Inc.’s (“CCM”) client commission arrangements if such managers receive eligible third-party brokerage and research services based on commissions generated in transactions in fixed income securities effected by CCM on an agency basis.

We have advised CCM of our view that relevant Commission guidance suggests that commissions from agency transactions in fixed income securities may be used by institutional asset managers to obtain brokerage and research services under Section 28(e) of the Securities Exchange Act of 1934.¹ Notwithstanding our view, CCM has indicated to us that there is a fairly widespread misconception among fixed income asset managers that the Section 28(e) safe harbor is unavailable or its availability is in doubt for acquiring third-party research through fixed income transactions executed on an agency basis. As such, we are requesting from you clarification on this matter through this request for no-action relief.

BACKGROUND OF CCM’S CLIENT COMMISSION ARRANGEMENTS

CCM is a registered institutional broker-dealer specializing in executing fixed income securities transactions on behalf of accounts and providing third-party research to institutional asset managers under arrangements which avail themselves of the Section 28(e) safe harbor (sometimes called “soft dollar arrangements”). CCM does not act as a dealer and thus does not transact from inventory when executing fixed income transactions in the secondary market. All

¹ 15 U.S.C. 78bb(e).

of CCM's agency transactions in fixed income securities are subject to CCM's best execution obligations to its customers.

DISCUSSION AND ANALYSIS

The Statutory Safe Harbor

Section 28(e) provides a safe harbor under certain circumstances to money managers who use brokerage commissions to obtain eligible brokerage and research services incidental to effecting portfolio transactions in securities. In order for a money manager to take advantage of the safe harbor in Section 28(e), the manager must make a good faith determination that the commissions paid to the broker-dealer effecting the transaction are reasonable in relation to the value of the brokerage and research services provided by such broker-dealer in connection with the manager's responsibilities to the advisory accounts for which the manager exercises investment discretion.

Section 28(e) and Fixed Income Securities

By its terms, the Section 28(e) safe harbor is available for research and brokerage services obtained in relation to commissions paid to a broker-dealer for effecting securities transactions. The Commission has stated that the term "commission" includes fees paid by a managed account to a broker-dealer for effecting a transaction in an agency capacity.² Moreover, as to fixed income securities, the legislative history of Section 28(e) does not distinguish between equity securities and fixed income securities. Also, the statutory language of Section 28(e) does not confine its applicability to "equity securities" even though such term is defined in the 1934 Act. To the contrary, Section 28(e) refers to "a securities transaction" as within its ambit. The term "security" is broadly defined in Section 3(a)(10) of the 1934 Act to include ". . . any note, stock, . . . bond, debenture . . . or, in general, any instrument commonly known as a "security" . . ." Accordingly, the language of Section 28(e) supports the notion that the scope of Section 28(e) includes commissions on transactions in fixed income securities executed on an agency basis.

This view is supported by the Commission's 2006 guidance regarding client commission practices under Section 28(e).³ In this guidance, the Commission indicates that money managers may use client funds to obtain brokerage and research services under Section 28(e) in connection with fixed income transactions that are executed on an agency basis,⁴ and further indicates that the Section 28(e) safe harbor "encompasses third-party research and proprietary research on equal terms."⁵

Based on the facts and analysis set forth in this letter, we ask the Staff to confirm that it will not recommend enforcement action to the Commission against institutional asset managers

² SEC Release No. 34-45194 (Dec. 27, 2001), 67 FR 6, 7 (Jan. 2, 2002).

³ SEC Release No. 34-54165, 71 Fed. Reg. 41978 (July 24, 2006).

⁴ *Id.* at 41980.

⁵ *Id.* at 41992.

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receiving eligible third-party brokerage and research services under CCM's client commission arrangements based on commissions generated in transactions in fixed income securities effected by CCM on an agency basis, where the money manager and CCM are otherwise complying with the federal securities laws.

If you have any questions regarding this request, please call Lee A. Pickard or William D. Edick at 202-223-4418. On behalf of Carolina Capital Markets, Inc., we appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Lee A. Pickard". The signature is written in a cursive style with a large initial "L" and a stylized "A".

Lee A. Pickard

cc: Thomas G. Shugrue
Stephen W. Chaires