

The Commission, in proposing to provide further guidance on money managers' use of client assets to pay for research and brokerage services under Section 28(e) of the Exchange Act, is undertaking a much needed update of this safe harbor. I support the proposal overall.

Especially critical, and appropriate, is the SEC's adoption of the NASD Task Force Report recommendation that the safe harbor protect the "intellectual content" of research, but not the means by which such content is provided. This is a distinction made decades ago in other areas of the law (e.g. music copyright, software contracting) and it is one that is very helpful in sorting out the issues.

Also to be applauded is the treatment of third-party and proprietary research on equal terms, especially in light of some of the recent excesses related to conflicted research.

One recommendation for further clarification, though, concerns Section III.D., and the inclusion or exclusion of "trade analytics, surveillance systems or other compliance mechanisms" from the safe harbor. As a general proposition, the cost of compliance mechanisms should be seen as simply part of the cost of providing any securities-related product or service. The issue here is whose duty is being fulfilled, and therefore who should pay for what. That is what is intended in the draft, I think, but it is not as clearly articulated as it might be.

Please review the sentence "Products and services such as trade analytics, surveillance systems, or compliance mechanisms, do not qualify as "brokerage" in the safe harbor because they are not integral to the execution of orders by the broker-dealers, i.e. they fall outside the temporal standards described above." This sentence is a little too readily quotable out of context to support propositions broader than, or even contrary to, what appears to be intended.

I would suggest it be revised to say something like, "Products and services such as trade analytics, surveillance systems, or compliance mechanisms used by the investment adviser or others to fulfill the duties of the investment adviser, do not qualify as "brokerage" in the safe harbor because they are not integral to the execution of orders by the broker-dealers."

Thank you for the opportunity to comment on this proposal.