



22 November 2005

Mr. Jonathan G. Katz
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: File No. S7-09-05

Dear Mr. Katz:

The Interstate Group, Division of Morgan Keegan & Company, Inc., (“Interstate”) writes to express its appreciation for the time and effort expended by the Commission and its Staff in drafting the proposed interpretive release with respect to client commission practices under Section 28(e) of the Securities Exchange Act of 1934 (the “Interpretive Release”). Formed in 1975, The Interstate Group is the oldest provider of independent research. We integrate trading, sales and support services for institutional clients, allowing professional money managers to purchase independent research products and services with commission dollars.

Interstate supports the Commission’s efforts to provide guidance to the securities industry with respect to the parameters of acceptable client commission arrangements under Section 28(e). We believe that there has been uncertainty in some circles regarding the Section 28(e) safe harbor, and the Interpretive Release makes it clear that money managers can continue to receive products and services that provide lawful assistance to them in their investment decision-making responsibilities. We are especially appreciative that the Interpretive Release clarifies that Section 28(e) applies equally to all client commission arrangements, both proprietary and third-party, and that the Commission has once again recognized in the release the benefits that independent research can provide to money managers and their accounts. Our comments on the release are as follows.

Framework for Analyzing Client Commission Arrangements

Interstate supports the Interpretive Release’s three-step test for determining whether a product or service falls within the Section 28(e) safe harbor. We also support the Commission’s determination to adopt a standard for “research services” that closely follows the standard adopted by the Commission in 1986, which we believe is well-understood in the industry. Finally, we agree with the Commission’s decision to provide guidance for the first time regarding the definition of “brokerage services” under Section 28(e).

Comments on Specific Products or Services

Interstate thanks the Commission for providing helpful guidance with respect to particular services that the Commission considers to be either within or outside of the Section 28(e) safe harbor. We do wish to comment on two services mentioned in the Interpretive Release.

Order Management Systems

The Interpretive Release indicates that the Commission does not consider Order Management Systems to be eligible for treatment as brokerage under Section 28(e). We ask that the Commission reconsider this position, given the many beneficial functions Order Management Systems provide to the money management community. We submit that Order Management Systems in use today contain many features that provide lawful and appropriate assistance to managers in the investment decision-making process, and thus may constitute research, and provide assistance and information with respect to the execution, clearance and settlement of orders, and thus may constitute brokerage. Therefore, we respectfully request that the Commission clarify that, to the extent a feature of an Order Management System meets the criteria set forth for research or brokerage by the Commission, such systems may be eligible to be paid for through client commission arrangements under Section 28(e).¹

Trade Analytics

Interstate notes that the Interpretive Release recognizes that trade analytics software and services may have a research component that is eligible for treatment as research under Section 28(e). We support this view, and wish to emphasize that in addition to providing a research component, trade analytics provide a myriad of helpful information regarding the quality of the brokerage services provided to a money manager's accounts, and assist managers in determining the availability of buyers and sellers of securities. As such, we request that the Commission confirm that, depending on its use, trade analytics may be eligible under Section 28(e) as both brokerage and research.

Commission-Sharing Arrangements

Interstate supports the discussion in the Interpretive Release regarding the minimum standards that must be found in a commission-sharing arrangement in order for an introducing broker participating in such an arrangement to provide research to a money manager under Section 28(e). We note that the plain language of Section 28(e) indicates that the safe harbor applies to payments made to broker-dealers involved in "effecting" securities transactions. The release states that, at a minimum, an introducing broker who wishes to provide research in a commission-sharing arrange-

¹ It is understood that to the extent an Order Management System may be used for brokerage/research as well as administrative purposes, the manager receiving the service would be required to make a "mixed-use" determination as discussed in the Interpretive Release.

ment under Section 28(e) must: 1) be financially responsible to the clearing broker until the clearing broker has received payment (or securities); 2) make and/or maintain records relating to its customer trades as required by Commission and SRO rules; 3) monitor and respond to customer comments concerning the trading process; and, 4) generally monitor trades and settlements. In our view, these criteria represent the minimum level of service an institutional customer should expect to receive from an executing broker-dealer registered with the Commission.

We believe that in setting forth these four criteria, the Commission has struck an effective balance between effectuating Congress' intent to preclude the practice of "give-ups," while at the same time allowing smaller broker-dealers the flexibility to continue to provide research to their institutional customers under Section 28(e), as long as they are participants in a normal and legitimate correspondent relationship.

Conclusion

The Interstate Group wishes once again to thank the Commission and the Staff for their efforts to provide guidance regarding client commission arrangements under Section 28(e), and we hope our comments are of assistance in the preparation of final guidance. We also greatly appreciate the Commission's recognition in the Interpretive Release of the benefits that independent research products and services provide to money managers and their advised accounts. Please do not hesitate to contact us with any questions or if we can be of further assistance.

Sincerely,



Grady G. Thomas, Jr.
President, The Interstate Group
Managing Director,
Morgan Keegan & Company, Inc.

GGT/jf

cc: Hon. Christopher Cox
Hon. Paul S. Atkins
Hon. Roel C. Campos
Hon. Cynthia A. Glassman
Hon. Annette L. Nazareth

Mr. Robert L.D. Colby, Acting Director
Mr. Larry E. Bergmann, Associate Director
Ms. Joanne Swindler, Assistant Director
Division of Market Regulation

Mr. Meyer Eisenberg, Acting Director
Mr. Robert E. Plaze, Associate Director
Division of Investment Management