CREDIT SUISSE

CREDIT SUISSE SECURITIES (USA) LLC

One Madison Avenue
New York, NY 10010-3629

Telephone 212 325 2265
Telefax 212 538 3395
Email : neil.radey@credit-suisse.com

Neil Radey
Managing Director and General Counsel Americas
Legal and Compliance Department

March 8, 2006

Via Electronic Filing

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: File No. S7-09-05 – *Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934* (Release No. 34-52635)

Dear Ms. Morris:

Credit Suisse Securities (USA) LLC ("Credit Suisse") is submitting this letter in response to the request by the Securities and Exchange Commission ("SEC" or "Commission") for comments on its proposed interpretive release relating to client commission practices under Section 28(e) of the Securities Exchange Act of 1934.[1]

We appreciate and thank you for the opportunity to comment on the Release, and, for purposes of this letter, will focus our comments and recommendations on a narrow and important issue relating to the scope of the Commission's interpretation of Section 28(e). Specifically, we believe, and recommend below, that in order to enhance best execution of customer orders, the Commission should interpret and clarify that Section 28(e) covers certain agency-like securities transactions executed on a principal basis by being matched anonymously in a broker-dealer's internal trading system.

As is described in the Release, Section 28(e) provides a safe harbor to money managers who use the commission dollars of their managed accounts to obtain brokerage and research services (so called "client commission" or "soft dollar" practices). Section 28(e) requires, among other things, that money managers determine in good faith that amounts paid for brokerage and research services are reasonable in relation to the value of such services received.[2]

---

[1] SEC Release No. 34-52635 (Oct. 19, 2005), 70 FR 61700 (Oct. 25, 2005) (the "Release").

[2] 15 U.S.C. 78bb(e)(1).

Until 2001, the Commission interpreted Section 28(e) to be available only for brokerage and research services obtained in relation to commissions paid to a broker-dealer acting in an "agency" capacity.[3] Prior to that time the Commission interpreted the term "commission" in Section 28(e) to mean that money managers could not rely on the safe harbor when they executed transactions in a "principal" capacity. The Commission's rationale was that fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of brokerage and research services received.

In 2001, however, the Commission interpreted Section 28(e) to encompass not only client commissions on agency transactions, but fees on certain riskless principal transactions as well.[4] When the Commission took this position, it stated that the term "commission" in Section 28(e) could include a markup, markdown, commission equivalent, or other fee paid by a managed account to a dealer for executing a transaction: (1) where the fee and transaction price are fully and separately disclosed on the confirmation, and (2) the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight.

The Commission reiterated this position in the Release by noting that it has interpreted Section 28(e) as encompassing client commissions on agency transactions and fees on certain riskless principal transactions that are reported under NASD reporting rules. The Commission also stated, however, that managers may not use client funds to obtain brokerage and research services under the safe harbor in connection with principal trades (except riskless principal trades).[5] As discussed below, consistent with its approach in 2001, we recommend that the Commission include another small, but important, subset of principal transactions as soft dollar eligible transactions. Specifically, the Commission should extend its Section 28(e) interpretation for riskless principal trades to include transactions entered into an alternative trading system ("ATS") where the ATS matches the customer order against a proprietary order of the broker-dealer representing the order.

In recent years, the Commission has noted that market participants have incorporated ATSs into their businesses to provide investors with an increasing array of execution services, and to furnish such services more efficiently and at lower prices.[6] Among the trading systems that have been developed to enable broker-dealers to provide customers with enhanced opportunities for best execution are systems that route investors' market and limit orders anonymously through a broker-dealer's internal matching engine (hereinafter referred to as an "Internal ATS" or "System") prior to being routed to another market center. Credit Suisse

---

[3] *See* Release, *supra* note 1, at 61703.

[4] *See* SEC Release No. 34-45194 (Dec. 27, 2001), 67 FR 6 (Jan 2, 2002).

[5] *See* Release, *supra* note 1, at 61702, fn. 20.

[6] *See* SEC Release No. 34-40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) at 70845.

maintains and operates an Internal ATS called CrossFinder, which has been integrated into its order management and market access system. CrossFinder is a dark ATS, meaning that all persons submitting orders through the System cannot view orders resting on the System's order book. CrossFinder also offers equivalent or superior pricing to the NBBO.

Orders routed through CrossFinder are exposed to limit orders resting on the System. If the routed orders can be satisfied with limit orders priced at the national best bid or offer ("NBBO") or better, then the orders are paired at the best available price and are transmitted to an exchange for execution or trade reporting pursuant to the rules of the exchange to which the order is routed. If prices on the System are inferior to the NBBO, the order is transmitted to a market center for execution.

Most Internal ATSs such as CrossFinder permit proprietary orders from trading desks of the broker-dealer operating the System to be entered as well as customer orders. This creates the possibility that a customer order can be matched in the Internal ATS against a proprietary order. Although the match is anonymous at the time of execution because the system is dark, the transaction is considered to be effected on a principal basis. Consequently, customer orders matched against principal orders resting on an Internal ATS (or principal orders matched against customer orders resting on an Internal ATS) would not qualify for the Section 28(e) safe harbor as the Commission currently interprets that Section. Ironically, the same two orders matched by an external ATS (*i.e.*, a trading system operated by another broker-dealer) would arguably qualify for the safe harbor.

As a result of the Commission's current interpretation of Section 28(e), the operator of an Internal ATS will block executions of orders from soft dollar accounts against proprietary interest in the System. This prevents money managers seeking client commission services for their managed accounts from using Internal ATSs and the liquidity and pricing advantages offered through them. This has the effect of limiting the utility of and liquidity in Internal ATSs and depriving investors and managed accounts of the opportunity to trade at the best possible prices.

Because Internal ATSs (and, in particular "dark" Internal ATSs) operate in a capacity more akin to agency intermediation, we believe that the Commission should expand the scope of Section 28(e) to cover the additional small subset of principal trades effected through such systems. Although the Commission historically has been concerned that fees on principal transactions are not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees are reasonable in relation to the value of brokerage and research services received, we believe that these concerns can be addressed in a manner consistent with the rationale followed by the Commission in 2001 when it permitted Section 28(e) to cover riskless principal transactions. Specifically, orders of managed accounts matched against principal orders in an Internal ATS could be covered by Section 28(e) where: (1) fee and transaction prices are fully and separately disclosed on trade confirmations, (2) transactions are reported to the tape exclusive of any markup, markdown, or commission equivalent, and (3) transactions are reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight. In addition, to ensure that a broker-dealer transacting in an Internal ATS was not pre-arranging the terms of the principal

trade, the Commission could require that orders residing in the System not be visible to any persons entering orders into the System. CrossFinder would satisfy these criteria, and we expect that other Internal ATSs would do so. If these conditions are satisfied, we believe it would be relatively easy for a money manager to make the requisite good faith determination under Section 28(e) with respect to these transactions. At the same time, by expanding Section 28(e) to cover these transactions, the Commission would serve the public interest by creating liquidity in Internal ATSs and enhancing best execution of customer orders.

* * * *

We appreciate your consideration of this important issue relating to the scope of Section 28(e), and would be pleased to make ourselves available to the Commission or any members of the staff if you would like to discuss any aspects of our comments.

Sincerely,

/s/

Neil Radey
Managing Director and
General Counsel Americas

cc: Mr. Robert L.D. Colby, Acting Director
Mr. James A. Brigagliano, Acting Associate Director
Ms. Jo Anne Swindler, Assistant Director
Division of Market Regulation

Mr. Howard L. Kramer
Schiff Hardin LLP