

601 Union Street, Suite 2801
Seattle, WA 2801

November 25, 2005

In reply to: File Number S7-09-05

Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934

Dear Jonathan G. Katz:

Rainier Investment Management seeks clarity on the proposed interpretive guidance regarding client commission practices under Section 28(e) of the Exchange Act. We believe the lines between accounting systems, order management systems, and execution management systems are blurred. Further clarification is needed due to the fact that each of these systems commonly overlaps the other in functionality in most of the commercially available product offerings. Furthermore, a proprietary system may span all three functions. Accordingly, with regard to using 28(e) as a safe harbor for order management systems ("OMSs"), we believe the SEC should still deem them as a mixed-use product. Permit me to elaborate.

Traditionally, an OMS was used to perform portfolio analysis, asset allocation, compliance, order management, position keeping, account allocation, and confirmation services. In the last few years, however, OMS functionality has emerged to provide more than just a means to efficiently perform day to day clerical duties such as collecting fills, performing trade allocations, and running compliance screens. Recently, OMS functionality has grown to encompass financial information exchange ("FIX") connectivity to brokers, crossing networks, ECNs, algorithms, and direct market access sponsored by brokers. An OMS can be broken down into several different modules. Two of these modules are the portfolio module and the trading module.

In the release, it is suggested that “brokerage services” begin only when an order is sent from a money manager to a broker and that accordingly OMSs are not eligible for the safe harbor with respect to “brokerage.” However, while the release makes some general references to the concept of “mixed use”, it does not specifically address whether OMSs or at least parts of their usage could instead fall under the safe harbor for “research”. Clarification on this point is needed. The portfolio module functionality of an OMS is very much utilized in the research process and facilitates the following tasks:

- Order generation
- Rebalancing to an index or composite
- Running "what if" scenarios to show risks or liquidity effects of possible changes
- Portfolio analysis
- Asset allocation

Therefore, we believe this portion of an OMS should fall under the safe harbor as “research.”

In addition, we argue that the increasing self-sufficiency of the buy-side and the numerous “brokerage” tools that comprise most OMSs and facilitate direct market access (DMA), use of broker algorithms, etc. have made outdated the SEC’s statement that OMSs should not be “eligible for the safe harbor as “brokerage” because they are not sufficiently related to order execution and fall outside the temporal standard for “brokerage” under the safe harbor.” Today's OMS has advanced beyond basic order routing to sophisticated platforms that are integral tools utilized in a trader’s workflow and are features that are key in deciding between competing OMS vendors. Today's buy-side trader must have the tools needed to control and execute their own orders, rather than be forced to rely solely on the sell-side trader. Allowing traders to take more control of their orders, OMSs provide an array of execution capabilities, which are paramount in quest for "Best Execution". Efficient order management and routing capability greatly facilitates “Best Execution” through the utilization of functionality such as:

- Real time execution reporting and market data to assist in monitoring the progression of each trade
- Providing access to multiple pools of liquidity at the same time
- Providing sorting and filtering functionality embedded in an electronic trade blotter to quickly locate and attend to problematic trades in real-time
- Providing an indication of interest (“IOI”) blotter to aid in locating liquidity
- Providing a "FIX" engine needed to send information to brokers or through a "FIX" provider's pipes directly to a market center
- Providing a single staging platform used to access alternative trading venues such as algorithms, crossing networks, and ECNs through "FIX" technology
- Providing pre-trade cost analysis tools to aid in choosing the appropriate execution strategy
- Capturing higher quality trade cost analysis data which can be utilized to refine trading strategies and improve execution quality

I can assure you that a substantial portion of an OMS's functionality, as well as a substantial portion of enhancements that buy-siders typically request of their OMS providers, relate to the above-mentioned functionality.

We are very concerned if the SEC intends that OMSs will not be eligible for the safe harbor under either the definition of research or brokerage. While not all aspects or components of an OMS would necessarily qualify as "brokerage and research services", we believe an OMS should definitely qualify as a mixed-use product, with a substantial portion of its cost eligible for the 28(e) safe harbor. More specifically, we believe the portfolio management component of an OMS should fall under "research" and the trading component should fall under "brokerage."

Our preferred definition of Best Execution is "the strategy that captures the most value from the portfolio manager's ideas". An OMS is arguably the most important tool used to facilitate the quest for Best Execution. Categorizing an OMS as a mixed use product will ensure that the smaller money management firms remain competitive in the investment arena so that they may be able to acquire this necessary technology that may otherwise prove too expensive to justify without raising client fees.

Thank you for the opportunity to provide feedback on this matter.

Sincerely,

Justin T. Kane
Director of Equity Trading
Rainier Investment Management, Inc.

Mark H. Dawson, CFA
Principal
Rainier Investment Management, Inc.