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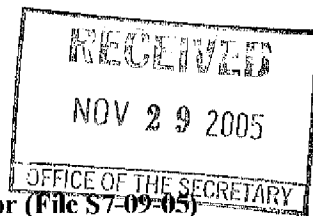
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November 28, 2005

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

Re: Proposed Guidance on the Scope of Section 28(c) Safe Harbor (File S7-09-05)



Dear Secretary Katz:

The Security Traders Association (STA)¹ appreciates the opportunity to comment on the important matters relating to the SEC's proposed interpretative guidance with respect to client commission practices under Section 28(c) of the Securities Exchange Act of 1934.

As STA outlined in its October 12, 2004, letter, client commission practices "increase competition among money management firms by lowering barriers to entry," "reduce the conflict of interests between money management firms and their investors by allowing managers to purchase the research needed to produce superior returns with client dollars" and "are an important mechanism to foster a greater range of research alternatives to investors at a reasonable cost."² Importantly, the proposed guidance correctly reaffirms that soft dollar arrangements or client commission practices can be used for independent research, confirming that third-party research should be treated in the same manner as proprietary research.

¹ The STA is a worldwide professional trade organization that works to improve the ethics, business standards and working environment for our members. We have approximately 5,500 members, all engaged in the buying, selling, and trading of securities. Our members participate in the STA through 27 national and international affiliate organizations and represent the interests of the trading community and institutional investors. The STA provides a forum for our traders, representing institutions, broker-dealers, ECNs and floor brokers to share their unique perspectives on issues facing the securities markets as they work together to promote their shared interests in efficient, liquid markets as well as in investor protection.

² See Letter from Mary Mc-Dermott-Holland, Chairman, and John Giesea, President and CEO, Security Traders Association, to William H. Donaldson, Chairman, Securities and Exchange Commission (Oct. 12, 2004), pg. 5.

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The proposed interpretation will undoubtedly bring certainty to the marketplace and provide clarification in terms of the research and brokerage services eligible for soft dollar arrangements.

We identify several questions and concerns about the guidance below.

- The release indicates that order management systems are not eligible for brokerage under Section 28(e), instead classifying such services or products as overhead. The release permits communications services related to execution, clearing, and settlement services, such as connectivity services and lines between the broker-dealer and order management systems, to be eligible brokerage services under the safe harbor. We believe order management systems fall within the temporal standard for brokerage since these services are integral to the execution of orders. Order management systems are the vehicles that have allowed money managers to quickly access the markets to achieve efficient low cost order execution while avoiding costly errors. The benefits derived from their use significantly contributes to allowing money managers to charge lower fees for their services, directly benefiting investors.
- The release indicates that post-trade analytics do not qualify for the brokerage exemption under Section 28(e), also classifying such services or products as overhead. Post trade analytics have evolved into real time indicators of execution quality thereby allowing the manager to determine whether the broker/dealers employed are allowing the manager to fulfill their best execution responsibilities. Money managers use post trade analytics to make determinations on where to place trades, it is inconceivable that this is not a part of the trade execution process. It is also unclear why the release proposes that pre-trade analytics are considered eligible, but post-trade analytics are considered ineligible services as both are used to achieve best execution.
- The release mentions that computer hardware, even if it may assist in the delivery of research, is not eligible research under the safe harbor. Does this mean that the hardware for information products, workstations and trading information systems would be ineligible for the services and products? Or would such services be considered mixed-use, where the service is eligible but the hardware is ineligible?
- Section 28(e)(3)(C) of the Exchange Act mentions custody services as a brokerage service that is eligible under the safe harbor. The current release mentions communications to custodians as eligible under the brokerage safe harbor, however, it does not provide sufficient guidance regarding what other custody services would be eligible under the safe harbor.

In response to the Commission's request for comment on various questions in the release:

Question 3: Does the Commission's interpretation offer appropriate guidance as to the eligibility of market data and trade analytical software under Section 28(e)?

- As noted above, the release makes a distinction between the eligibility of pre-trade and post-trade analytics. However, it is not clear why post-trade analytics are not eligible even when such services provide valuable information that is used for executing trades.



Question 4. Does the Commission's interpretation offer sufficient guidance as to the eligibility of "brokerage" services, functions, and products under Section 28(e)? How would this guidance affect existing arrangements or practices? Is the Commission's temporal standard sufficiently clear? Are there types of services that should be excluded from the safe harbor, even though they might appear to satisfy the temporal standard? If so, explain why those services should be excluded – for example, is the service unrelated to execution of transactions?

- The temporal standard for eligible brokerage services provides a clear standard, with such services beginning when an order is transmitted and ending after clearance and settlement of the transaction. However, the release treats order management systems (OMS) as ineligible brokerage services, even though such systems are integral to the efficient handling and execution of customer trades. Order management systems are now being more fully integrated into the execution process, so many of the functions are now part of the brokerage process, which fall within the parameters of Section 28(e)(3) supporting trade execution. With the degree of integration and the multi-functionality now seen in many order management systems, it would be very difficult to separate out the different functions and account for OMS as a mixed-use product.
- As noted above, it is unclear why the proposal makes a distinction as to the eligibility of post-trade analytics under the temporal standard. New technological innovations in post-trade analysis now allow for an almost real-time picture of the trading results to help determine how the executing brokers compare to their competitors. This helps in determinations of best execution.
- The eligibility for brokerage under Section 28(e)(3) includes services incidental to clearance, settlement and custody, however, the interpretive release does not provide specific guidance on custody as part of the temporal standard for brokerage services. STA suggests that, since custody services are specifically allowed in the act, this interpretation specifically recognize their allowability. If there are any concerns about allowable custodial services those concerns should also be specifically addressed.

Question 5. Does the Commission's interpretation offer sufficient guidance about third-party research and commission-sharing arrangements?

- Additional guidance is needed regarding commission-sharing arrangements. The guidance provided contains little of substance. The most onerous of the four duties introducing brokers must perform relates to the second requirement: to "make and/or maintain records relating to its customer trades required by Commission and SRO rules..." Currently, by rule, the clearing broker, rather than the introducing broker, is allowed to make and maintain such records. The guidance is unclear as to whether the clearing broker may create and maintain the records on the behalf of the introducing broker. If not the rules allowing such practice must be revisited. This lack of guidance will open the door to many types of interpretations, not all of them "beneficial to the client".



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Question 8. Should the Commission provide additional guidance on the allocation and documentation of mixed-use items?

- The Commission's treatment of mixed-use items is appropriate, but additional guidance would be helpful as to the "good faith showing of the reasonableness of the commissions paid in relation to the value" of the items allocated as brokerage or research services. Further explanation of the types of documentation necessary, as well as additional guidance on the "reasonable allocation" of the costs, would be beneficial in the determination of mixed-use allocations.

Question 10. Should the Commission afford firms time to implement the interpretation? In commenting, please provide specific examples of any potential implementation issues.

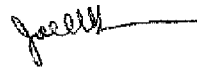
- STA suggests that implementation of the interpretation would be best accomplished in tandem with implementation of the interpretive guidance on disclosures of client commission practices. Additionally, STA recommends implementing the guidance either before or after the implementation of Regulation NMS so as to better evaluate and isolate the potential technological impacts associated with implementation of both initiatives.

We thank the Commission for the opportunity to comment on this filing. As in the past, we look forward to continued dialogue on this issue of critical importance to our members.

Very truly yours,



James A. Duncan
Chairman



John C. Giese
President & CEO

Cc: The Honorable Christopher Cox, Chairman
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Cynthia A. Glassman
The Honorable Annette L. Nazareth

Robert L.D. Colby, Acting Director, Market Regulation

Primum Meum Proctum

