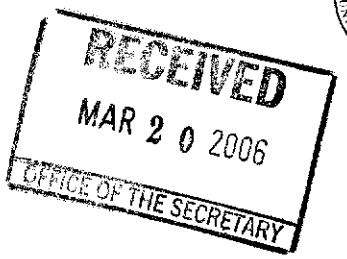
U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210



March 13, 2006

Jonathan G. Katz
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Subject: File Number S7-09-05

Dear Mr. Katz:

This letter is in response to the Commission's request for comments on its proposed interpretive release with respect to client commission practices under Section 28(e) of the Securities Exchange Act of 1934 (section 28(e)). We very much appreciate the Commission's proposal to modernize and strengthen the rules in this important area.

We note that while the release and request for comments focuses upon the scope of section 28(e), the Commission, in the release, states that it is considering issuing further guidance with respect to disclosure and documentation of client commission practices and the use of the safe harbor. For the reasons set forth below, we would urge the Commission to issue such guidance. We also believe our comments and suggestions regarding such disclosures may help further minimize the potential for abuse in this area and help the Department of Labor in its enforcement of the provisions of Employee Retirement Income Security Act (ERISA).

The Employee Benefits Security Administration is responsible for carrying out the Department of Labor's enforcement and regulatory responsibilities under ERISA. With an estimated $4.4 trillion in assets, ERISA-covered pension plans rely on investment managers to perform their duties prudently and solely in the interest of the plans' participants and beneficiaries consistent with ERISA's fiduciary responsibility provisions. Section 28(e) establishes a safe harbor pursuant to which an investment manager may use client funds to purchase brokerage and research services for the accounts that they manage. In the absence of section 28(e), such use of an ERISA-covered pension plan's assets would constitute both a violation of the manager's duty of loyalty under section 404 of ERISA and a prohibited transaction under section 406 of ERISA.

Obviously, the potential for abuse exists when a fiduciary has interests that conflict with those of the plan's on whose behalf the fiduciary has been engaged. Potential conflicts of interest in providing investment-related services to pension plans also raise issues under the Investment Advisors Act of 1940, as reflected in the SEC *Staff Report Concerning Examinations of Select Pension Consultants.* The Commission's proposed rules will help mitigate the conflicts inherent in the investment manager/client relationship.

As the Department stated in its Technical Release 86-1 regarding soft dollars and fiduciary duties, where an investment manager has entered into a client commission arrangement, section 28(e) does not relieve anyone other than the person who exercises discretion from the applicability of the fiduciary provisions of ERISA.[1] Therefore, the fiduciary who appoints the investment manager is not relieved of its ongoing duty to monitor the investment manager to assure that the manager has secured best execution of the plan's brokerage transactions and that the commissions paid are reasonable in relation to the value of the brokerage and other services received by the plan. In performing these duties, fiduciaries must determine whether the amounts they are paying for investment management services, including commissions, are reasonable. In this regard, we would urge the Commission to consider requiring that investment managers disclose with greater specificity the amount of commission dollars paid by their clients for research and brokerage services under section 28(e) and how such expenditures benefit the accounts of their clients. In order for plan fiduciaries to best understand and utilize this information, we would suggest a standard form of such disclosure.

Second, investment managers should be required to establish and disclose to clients their system of internal controls to assure compliance with the requirements of section 28(e) as a condition for the use of a client's commissions to purchase research and brokerage services.

Third, with respect to "mixed use" items, we believe that investment managers should be required to provide to plan fiduciaries at the beginning of their engagement a list of the mixed use items which they intend to pay for in part with client commissions and a description of the investment manager's methodology for allocating expenses for such items.

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[1] Statement on Policies Concerning Soft Dollars and Directed Commissions Arrangements, ERISA Technical Release No. 86-1, May 22, 1986.

Because it may be very difficult to determine after the fact whether the investment manager has made a good faith allocation of expenses for mixed use items, guidance should make clear that, if an investment manager is unable to provide sufficient documentation to enable compliance personnel to ascertain that the basis for the allocation and that the client commissions paid were reasonable in relation to the value of the portion allocated for research and brokerage services, the mixed use items will be treated as solely for the manager's overhead items. We believe such a documentation standard would help ensure that plan fiduciaries, as well as governmental compliance officers, would be able to readily determine compliance with section 28(e) with respect to mixed use items.

We hope that these comments are helpful to the Commission as it develops further soft dollar guidance.

Sincerely,

Ann L. Combs