

On May 17, 2007 SEC Chairman Christopher Cox wrote Senator Dodd, Chairman of the Senate Banking Committee, and Congressman Frank, Chairman of The House Financial Services Committee, requesting that the Committee consider legislation to repeal or substantially revise Section 28(e) of the Securities Act of 1934, which provides safe harbor for soft dollar arrangements between broker-dealers and money managers.¹

I respectfully disagree with the Chairman's analysis and recommendation regarding soft dollars.

Soft dollar or client commission arrangements actually *lessen conflicts of interest*. Under client commission arrangements money managers are able to use client commissions to access a broad range of research offerings and execution services which are intended to enhance the investment making process. If research purchased via soft dollar arrangements were paid for by the fund manager rather than by investor commissions, active fund managers would likely attempt to cut costs by purchasing less research. The potential impact could be diminished returns for the investor. The use of soft dollars commissions assist in helping to provide excellence in stock selection and trade timing and do not impact the obligation of fund advisers and broker-dealers to achieve best execution with respect to price, cost, speed of execution and market impact. Additionally, these soft dollar services can only be used for the benefit of the investment decision-making process and thus the benefit of the investor. Money managers may pay higher transaction fees by using soft dollar arrangements, but under such arrangements they are paying for more than the basic transaction (i.e. the money manager is receiving research that should enhance the client's return).

Client commission arrangements also benefit investors by:

Enhancing competition among fund managers by lowering barriers to entry for smaller fund managers

Enhancing competition among research providers by allowing independent research providers, who are generally smaller and who may not have extensive distribution channels, to compete with large in-house research providers

In 1975, Congress added Section 28(e) to the Securities Exchange Act for the very purpose of providing an investment manager with a safe harbor from State or Federal law that would otherwise deem "paying up" for trade execution and/or for research an unlawful action or a breach of fiduciary duty. Since that time the SEC has conducted many "sweeps" targeting 28(e) practices and found few violations. Indeed, the SEC's interpretative guidance issued July 18, 2006 has strengthened the industry's commitment to compliance with the letter and intent of the law. Abuses of soft dollar arrangements are outside the scope of Section 28(e), so in those cases the SEC should take appropriate enforcement action.

Repeal of Section 28(e) would open the industry to frivolous lawsuits and require a costly structural change that could be economically accomplished with enhanced disclosure.

¹ Letter from SEC Chairman Christopher Cox to Senate Banking Committee Chairman Christopher Dodd and House Financial Services Committee Chairman Barney Frank, May 17, 2007.

I favor the retention of Section 28(e) and I urge the SEC to provide guidance on disclosure practices.

Thank you,