

**MEMO# 5223**

October 12, 1993

## **SEC PROPOSES RULE ON PAYMENT FOR ORDER FLOW**

October 12, 1993 TO: SEC RULES COMMITTEE NO. 90-93 MARKET 2000 TASK FORCE RE: SEC PROPOSES RULE ON PAYMENT FOR ORDER FLOW

The Securities and Exchange Commission recently proposed amendments to Rule 10b-10 and proposed Rule 11Ac1-3 under the Securities Exchange Act to require broker-dealers to disclose (1) on confirmations, whether payment for order flow was received and, if so, the amount of the payment and (2) on annual account statements, the firm's policies regarding receipt of payment for order flow and information regarding the aggregate amount of payments received by the firm over the past year. "Payment for order flow" generally would be defined to include all arrangements compensating brokers for directing order flow. The proposing release also announced that the Commission has directed the staff to report within 45 days on the advisability of requiring investment advisers to make more extensive disclosure of their soft dollar arrangements. According to footnote 9 of the release: [t]he practice of paying for order flow in the retail equity markets [and] the use of soft dollars in the institutional markets . . . involve agents obtaining benefits from broker-dealers as a result of customers' securities transactions; yet there are major differences between these practices. Payment for order flow and the use of soft dollars involve different market participants, have different competitive and market structure concerns, and have different legal frameworks. The Commission believes, however, that disclosure is an important means of addressing concerns arising from soft dollar practices as well as payment for order flow. The release requests comment on all the issues raised regarding the proposed disclosure requirements, as well as alternative approaches, such as requiring that payment for order flow be passed through to customers, adopting a decimal-based system for pricing and reporting, or banning the practice outright. A copy of the release is attached. The comment period ends on December 3, 1993. In order to assist us in determining whether to submit a comment letter, we would appreciate any comments you might have by November 1, 1993. My direct number is 202/955-6251. Thomas M. Selman Assistant Counsel Attachment