

MEMO# 2318

November 8, 1990

SEC LETTER CLARIFYING THAT PRINCIPAL TRANSACTIONS ARE OUTSIDE THE SOFT DOLLAR SAFE HARBOR

November 8, 1990 TO: SEC RULES MEMBERS NO. 76-90 INVESTMENT ADVISER MEMBERS NO. 53-90 INVESTMENT ADVISER ASSOCIATE MEMBERS NO. 48-90 RE: SEC LETTER CLARIFYING THAT PRINCIPAL TRANSACTIONS ARE OUTSIDE THE SOFT DOLLAR SAFE HARBOR _____ The SEC's Division of Market Regulation issued the attached letter clarifying that all principal transactions are outside Section 28(e) of the Securities Exchange Act of 1934, which provides a safe harbor for certain soft dollar arrangements. The letter states that a transaction executed by a broker-dealer acting in a principal capacity is not within the scope of the safe harbor in Section 28(e), irrespective of the label placed on the fee charged for effecting that transaction. Thus, the fact that a broker-dealer imposes a charge that is denominated as a "commission," rather than a mark-up, would not be relevant to the application of Section 28(e) if the firm acted in a principal or riskless principal capacity. The staff also stated that money managers executing block transactions should carefully consider their best execution obligations, regardless of the application of Section 28(e). The staff noted that in certain situations a money manager may obtain better overall execution by dealing with a broker-dealer that will commit its own capital for all or a portion of a block transaction. Even though that transaction will not be covered by Section 28(e), if a better trade price was obtained through a broker-dealer with the ability to commit its own capital, that better trade price could far outweigh the benefit to the client of paying a lower commission rate to another broker-dealer without comparable execution facilities. Amy B.R. Lancellotta
Assistant General Counsel Attachment