UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

October 26, 2017

Timothy W. Cameron
Lindsey Weber Keljo
Asset Management Group
Securities Industry and Financial Markets Association
1101 New York Avenue, NW, 8th Floor
Washington, DC 20005

Re: Section 28(e) of the Securities Exchange Act of 1934 and MiFID II

Dear Mr. Cameron and Ms. Keljo,

In your letter dated October 25, 2017, you seek assurances from the staff of the Division of Trading and Markets ("Staff") that it will not recommend enforcement action to the Securities and Exchange Commission ("Commission") if a money manager pays for research through the use of research payment accounts ("RPAs"), as described in your letter, in reliance on the safe harbor of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act"). You request such relief in connection with practices designed to comply with the implementation of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II"),[1] which takes effect on January 3, 2018. As you describe in your letter, you are seeking relief only under the circumstance where a money manager uses client assets to make payments through an RPA for research alongside payments for execution services.[2]

I. Background

As you state in your letter, the relevant provisions of MiFID II will, among other things, prohibit certain money managers from receiving "inducements" from third parties in connection with providing any investment or ancillary service to a client. Under MiFID II, an "inducement" can include a money manager's receipt of research from the executing broker-dealer, among others. You state in your letter that under MiFID II, the European Commission will permit money managers to pay for research from an RPA which is funded by client assets.[3]

In your letter, you describe how money managers in the U.S. often rely on a client commission arrangement ("CCA") structure to pay a single "bundled" commission to broker-dealers for order execution as well as Section 28(e) eligible brokerage and research services.

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1 European Council Directive 2014/65/EU, O.J. (L 173) 57, 349.

2 This relief is intended to address concerns that have arisen in light of the adoption of MiFID II while preserving choice in maintaining the Commission's long-standing approach to arrangements under Section 28(e).

3 Commission Delegated Directive 2017/593, art. 13.1(b), O.J. (L 87) 60, 500 (EC).

The executing broker-dealer credits the portion of the commission for research to a CCA administered by the executing broker-dealer, and retains the remainder of the commission payment.

You state that, in the alternative, the executing broker-dealer may forward the research portion of the commission to a CCA administered by an external "aggregator" or administrator. Where an external aggregator or administrator is used, the money manager instructs the executing broker-dealer to deduct the portion of the commission payment for brokerage, including execution, from payments going to the CCA administered by that third party.

In your letter, you state that, in connection with both alternatives, the money manager receives research from a research provider or the executing broker-dealer, paid for through a CCA funded with client assets. Your letter also states that while the commission paid by the client is bundled to include research and brokerage (including execution), the commission effectively becomes unbundled when, pursuant to the money manager's agreement with the executing broker-dealer, the executing broker-dealer retains its brokerage (including execution) portion and credits (in the case of the executing broker-dealer administering the CCA) or transmits (in the case of the external "aggregator" administering the CCA) the research portion to the CCA.

In your letter, you further describe how you expect a typical RPA will work, stating that the RPA model is the same in many respects as the CCA model, with two relevant distinctions. First, in the RPA model, the amount paid for research is identified separately from the amount paid for execution before the money manager makes the payments to the executing broker-dealer.[4] In a CCA, the brokerage (including execution) and research portions of the commission are separated at a later point in time, i.e., when the executing broker-dealer retains its payment for brokerage, including execution, and credits or transmits the research payment to the CCA.

Second, the RPA is required to be under the control of the money manager and the money manager is held responsible for the RPA.[5] When an RPA is operated in connection with a CCA, the research payments will continue to be paid to the executing broker-dealer, and the payments into the CCA will then be routed into an RPA. The money manager may in some circumstances engage the executing broker-dealer or third-party administrator to administer the RPA. In all cases, however, the executing broker-dealer will be contractually required to collect the research payments alongside payments for execution services made by the money manager out of client assets and pay such amounts into the RPA. By contract, once these research payments are deposited into an RPA, they may be used solely to pay for research, or be refunded to clients.

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4 Id. at art. 13.

5 Id. at art. 13.1(b) and 13.1(b)(iii).

II. Response

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, the Staff will not recommend enforcement action to the Commission against a money manager seeking to operate in reliance on Section 28(e) of the Exchange Act if it pays for research through the use of an RPA, as described in your letter and conforming to the requirements for RPAs in MiFID II, provided that all other applicable conditions of Section 28(e) are met.[6] In particular, in accordance with the facts and representations set forth in your letter, the Staff notes that the relief will apply only in the following circumstances:

- The money manager makes payments to the executing broker-dealer out of client assets for research alongside payments to that executing broker-dealer for execution.
- The research payments are for research services that are eligible for the safe harbor under Section 28(e).
- The executing broker-dealer effects the securities transaction for purposes of Section 28(e).
- The executing broker-dealer is legally obligated by contract with the money manager to pay for research through the use of an RPA in connection with a CCA.

This position is based strictly on the facts and representations you have set forth in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation at any time. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

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[6] In addition, money managers and broker-dealers must otherwise comply with the federal securities laws. Broker-dealers may be subject to liability if they cause or aid and abet another person's violation of a provision of the federal securities laws. *See* Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Release No. 54165 (July 18, 2006), 71 Fed. Reg. 41978 (July 24, 2006) at 41995 ("To clarify, the Commission intends only to remind parties to Section 28(e) arrangements that, under existing law, money managers may be subject to liability under federal securities laws, ERISA, and state law, and broker-dealers may be subject to liability if they aid and abet another person's violation of a provision of the securities laws. For example, if a broker-dealer knows that a money manager has represented to its clients that he will operate solely within Section 28(e), and the adviser asks the broker-dealer to pay for office furniture and computer terminals, which under this release are not eligible under the safe harbor, the broker-dealer may risk aiding and abetting liability.").

If you have any questions regarding this letter, please call Jo Anne Swindler, Assistant Director; Patrick Joyce, Special Counsel; Stephen Benham, Special Counsel; or me at (202) 551-5550.

Sincerely,

Heather Seidel

Heather Seidel
Acting Director
Division of Trading and Markets

Cc: David Blass
Nicole Trudeau
Simpson Thacher & Bartlett LLP

sifma

asset management group

October 25, 2017

Heather Seidel
Acting Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Ms. Seidel:

The Asset Management Group of the Securities Industry and Financial Markets Association ("**AMG**")[1] requests that the Division of Trading and Markets of the U.S. Securities and Exchange Commission (the "**SEC**" or the "**Commission**") confirm it will not recommend enforcement action if a money manager pays for research through the use of research payment accounts ("**RPAs**"), as described in this letter, in reliance on Section 28(e) of the Securities Exchange Act of 1934 ("**Exchange Act**"). We request this relief in connection with practices designed to comply with the implementation of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("**MiFID II**"), which takes effect on January 3, 2018.[2] We describe below the background for our request and the policy rationale for the staff's issuance of the relief we seek.

I. The Background for the No-Action Request – MiFID II

MiFID II will, among other things, prohibit certain money managers from receiving "inducements" from a third party in connection with providing any investment or ancillary service to a client. Under MiFID II, an "inducement" can include a money manager's receipt of research from the executing broker, among others. Under MiFID II, the European Commission will permit money managers to pay for research from an RPA which is funded by client assets.[3]

[1] AMG's members represent U.S. asset management firms whose combined global assets under management exceed $34 trillion. The clients of AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

[2] European Council Directive 2014/65/EU, O.J. (L 173) 57, 349.

[3] Commission Delegated Directive 2017/593, art. 13.1(b), O.J. (L 87) 60, 500 (EC). The European Commission published a "Delegated Directive" setting out the final European Commission position regarding inducements and the use of dealing commissions for investment research. This directive states that research by third parties to advisers, obtained using client assets, will not be regarded as an inducement prohibited under MiFID II if the research is received in return for: (i) direct payments by the adviser out of its own resources; or (ii) payments from a

This letter addresses one way to fund an RPA – using clients' research payments collected alongside execution payments.[4] MiFID II also contemplates funding an RPA through a separate research payment by a client that is not made alongside an execution payment.[5] The relief we request at this time, however, relates solely to the circumstance where a money manager uses client assets to make a payment through an RPA for research alongside payments for execution services.

The relief we request is necessary to allow the long-standing approach in the U.S. for research payments and related regulatory guidance to work in tandem with the MiFID II construct. Given the global interconnectedness of financial markets, MiFID II will have wide ranging implications, beyond the borders of the European Union. It will impact many practices by money managers that rely on research provided by U.S. or European broker-dealers. Without the relief we request, it may limit those money managers' ability to continue to rely solely on a client commission arrangement structure, at least as it operates today.[6] For their part, many European money managers plan to establish RPAs to comply with MiFID II. Both broker-dealers and money managers with operations in the European Union may seek to utilize RPAs as global approaches to payments for research. Therefore, without the requested relief, the long-standing approach in the U.S. could effectively become inoperable, primarily for technical, immaterial reasons, and could preclude U.S.-based money managers and broker-dealers from operating in the European Union.

II. Research Payment Accounts and Client Commission Arrangements

RPAs are very similar to client commission arrangements, a common method used today to pay for Section 28(e) eligible research using client transaction commissions. Attachments A and B illustrate how typical client commission arrangements and RPAs function, and how similar they are to one another.

Attachment A illustrates a typical client commission arrangement model. There, a money manager places a client order through an executing broker, paid for with a single "bundled" commission for order execution as well as Section 28(e) eligible brokerage and research services. For purposes of Section 28(e), the executing broker is "effecting" the

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separate RPA controlled by the adviser and funded by means of a research budget that is set, regularly assessed, and agreed upon with each client.

[4] While the research charge may be paid alongside the execution charge, MiFID II does not permit the research amount to be linked to the volume or value of transactions executed on behalf of the client.

[5] MiFID II also allows a money manager to pay for research directly to the research provider.

[6] The SEC addressed client commission arrangements in a 2006 interpretive release. *See* Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Release No. 54165 (July 18, 2006) ("**2006 Interpretive Release**"). As used in this letter, the term "client commission arrangement" has the same meaning as in the 2006 Interpretive Release. It is important to note that the U.S. marketplace uses a different term – commission sharing arrangements – to refer to client commission arrangements. As these terms are used synonymously, an arrangement that is titled a "commission sharing arrangement" but that functions as a client commission arrangement as described in the 2006 Interpretive Release should qualify for the no-action relief we request.

transaction[7] and "providing" the research, whether by assuming the legal obligation to pay for the research or by performing various tasks, including paying the research preparer directly.[8] The executing broker reviews the description of the services to be paid for with client commissions under Section 28(e) for red flags that indicate the services are not within Section 28(e) and agrees with the money manager to use client commissions only to pay for those items that reasonably fall within the Section 28(e) safe harbor. The executing broker also develops and maintains procedures so that research payments are documented and paid for promptly.

The executing broker credits the portion of the commission for research to a client commission arrangement administered by the executing broker, and retains the remainder of the commission payment. In the alternative, the executing broker may forward the research portion of the commission to a client commission arrangement administered by an external "aggregator" or administrator.[9] The money manager then receives research from a third-party research provider or the executing broker, paid for by the client commission arrangement assets. Where an external aggregator or administrator is used, the money manager instructs the executing broker to deduct the portion of the commission payment for brokerage, including execution, from payments going to the client commission arrangement administered by that third party.

In both alternatives, the money manager receives research from a research provider or the executing broker, paid for through a client commission arrangement funded with client assets. While the commission paid by the client is bundled to include research and brokerage, including execution, the commission effectively becomes unbundled when, pursuant to the money manager's agreement with the executing broker, the executing broker retains its brokerage (including execution) portion and credits (in the case of the executing broker administering the client commission arrangement) or transmits (in the case of the external "aggregator" administering the client commission arrangement) the research portion to the client commission arrangement. It is a very common practice for the money manager to negotiate with the executing broker to establish the execution, research and bundled rates of the commission.

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[7] A broker-dealer effects a securities transaction if it executes, clears, or settles the transaction. Furthermore, as explained in the 2006 Interpretive Release, a broker-dealer is considered to "effect" the trade when it performs at least one of four minimum functions and takes steps to see that the other functions have been reasonably allocated to one or another of the broker-dealers in the arrangement in a manner that is fully consistent with their obligations under SRO and Commission rules. The four functions are: (1) taking financial responsibility for all customer trades until the clearing broker-dealer has received payment (or securities), *i.e.*, one of the broker-dealers in the arrangement must be at risk for the customer's failure to pay; (2) making and/or maintaining records relating to customer trades required by Commission and SRO rules, including blotters and memoranda of orders; (3) monitoring and responding to customer comments concerning the trading process; and (4) generally monitoring trades and settlements.

[8] *See* 2006 Interpretive Release.

[9] When a money manager uses an aggregator, the money manager instructs each participating execution broker to transfer a portion of the commission on designated trades to the aggregator, which administers the client commission arrangement assets from one account.

Attachment B illustrates how we anticipate a typical RPA model will work.[10] The RPA is the same in many respects as the client commission arrangement, with two relevant distinctions. First, the amount paid for research is identified separately from the amount paid for execution before the money manager makes the payments to the executing broker.[11] The separation of these amounts occurs with a client commission arrangement too, but the payments are separated at a later point in time, i.e., when the executing broker retains its payment for brokerage, including execution, and credits or transmits the research payment to the client commission arrangement.

Second, the RPA is required to be under the control of the money manager, and the money manager is held responsible for the RPA.[12] When an RPA is operated in connection with a client commission arrangement, the research payments will continue to be paid to the executing broker, and the payments into the client commission arrangement will then be routed into an RPA. The money manager may in some circumstances engage the executing broker or a third party administrator to administer the RPA. In all cases, however, the executing broker will be contractually required to collect the research payments alongside payments for execution services made by the money manager out of client assets and pay such amounts into the RPA. By contract, once these research payments are deposited into an RPA, they may be used solely to pay for research, or be refunded to clients.

III. Analysis and Requested Relief Under Section 28(e) of the Exchange Act

Under the Section 28(e) safe harbor, a money manager that satisfies the conditions of the section does not act unlawfully or breach its fiduciary duties solely on the basis that the adviser uses client commissions to pay a broker-dealer more than the lowest available commission rate for eligible research and brokerage services provided by the broker-dealer (beyond "pure execution").[13]

We respectfully submit that payments sent to an executing broker for research alongside payments for execution are "an amount of commission for effecting a securities transaction" and that the research services under the RPA model are "provided by" the executing broker. The SEC has confirmed that client commission arrangements can satisfy both of these elements. We urge the staff to issue no-action relief to make clear that RPAs, as described in this letter, qualify

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[10] Under MiFID II, the operation of an RPA must satisfy a number of conditions not relevant to the comparison to a client commission arrangement for purposes of this letter. Among other things: (i) a research budget for the client must be agreed with the client and regularly assessed, and the money manager must provide the client with annual updates about the total research payments attributable to that client over the year; (ii) the money manager owns, controls and has regulatory responsibility for the oversight of the RPA; and (iii) the money manager must regularly assess the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

[11] Commission Delegated Directive 2017/593, art. 13, O.J. (L 87) 60, 500 (EC). For purposes of the no-action relief we request in this letter, the amount charged for research is paid alongside the amount charged for execution of the transaction.

[12] Commission Delegated Directive 2017/593, art. 13.1(b) and 13.1(b)(iii), O.J. (L 87) 60, 500 (EC).

[13] *See*, *e.g.*, 2006 Interpretive Release at 41984. The safe harbor is available, for example, with respect to Section 17(e)(1) of the Investment Company Act of 1940 and the Employee Retirement Income Security Act of 1974.

under Section 28(e) as well. Differences between RPAs and client commission arrangements do not change the economic arrangement of the payment for research, and should not result in different treatment for purposes of Section 28(e) of the Exchange Act.

a. The term "commission" should include separate payments for research that are paid alongside those for execution.

We respectfully submit that an amount for research paid alongside an amount for execution is equivalent to a bundled commission for purposes of Section 28(e). To take a different view elevates form over substance.

Section 28(e) assumes that a "commission" for Section 28(e) purposes includes a research component that is separately quantifiable from the execution component. Indeed, both the client commission arrangement and the RPA result in unbundled commissions, but at slightly different points in time. As explained above, in the case of the RPA, the separate payments for research and execution are unbundled prior to trade execution. For a client commission arrangement, the executing broker unbundles the commission after trade execution, but often that unbundling has previously been negotiated between the money manager and the broker. There is no meaningful distinction between unbundling the commission prior to, or following, trade execution.

To fall within the Section 28(e) safe harbor, advisers and other fiduciaries must make a good faith determination that the amount of commission paid is reasonable in relation to the value of the brokerage and research services being provided. Money managers and other fiduciaries will be in a position to make the required good faith determination if they are able to assess the value of the research being obtained with commissions, as will be the case with RPAs.

b. Research is "provided by" an executing broker under the RPA model, as described in this letter.

Section 28(e) requires that a broker-dealer involved in effecting the securities transaction also be involved in providing the research. Where the executing broker is also the author of the research, it is clear that the research is provided by that broker. But it also should be clear, when viewed under the SEC's prior interpretive guidance and the intent of Congress in creating Section 28(e), that third-party research is provided by the executing broker in an RPA model.

The statutory linkage of providing research and executing (or otherwise effecting) the securities transaction was intended to address so-called "give-ups." At the time Section 28(e) was added to the Exchange Act, give-ups were payments to another broker-dealer of a portion of the commission required to be charged by the executing broker-dealer. The SEC previously had brought enforcement actions involving give-ups.[14]

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[14] *See*, *e.g.*, Provident Management Corp., 44 SEC 442 (Dec. 1, 1970) (finding violations of the antifraud provisions of the federal securities laws where unaffiliated broker-dealers who participated with the fund's officers, adviser, and affiliated broker-dealer in a reciprocal arrangement in which fund transactions were placed with unaffiliated broker-dealer in exchange for payment to affiliated broker-dealer of "clearance commissions" on unrelated transactions for which affiliated broker-dealer performed no function).

As the SEC has observed, the statutory linkage of execution and providing research allows money managers both to seek best execution and, separately, to obtain good research. Money managers may use client commissions to pay for third-party research and also participate in selecting the research services or products provided by the third party.[15] It is also permissible for a third party to send the research directly to the money manager.

The availability of the Section 28(e) safe harbor for third-party research rests on whether the executing (or other effecting) broker "is legally obligated to pay for research [and therefore] is 'providing' research under the safe harbor."[16] In contrast, the SEC has stated that the safe harbor is not available for "arrangements to conceal the payment of client commissions to intermediaries (including broker-dealers) that provide benefits only to the money manager."[17]

We believe that RPAs result in the executing broker providing research within the meaning of the SEC's 2006 interpretive guidance. In using the RPA model, the executing broker will be legally obligated to pay for research by transmitting payments it receives for research into the RPA. Use of an RPA will require by contract that safeguards are in place to ensure that RPA assets are used only to purchase research for clients or are rebated to clients to the extent a surplus exists in the RPA at the end of the period.[18] Accordingly, the executing broker has a legal obligation to pay for research by virtue of its contractual obligation to pay into the RPA the research amounts it collects out of client assets as directed by the money manager.

Moreover, a MiFID II compliant RPA does not and cannot result in any give-ups or other concealment of the payment of client commissions to intermediaries. Consequently, RPAs do not lend themselves to the types of abuses that Congress sought to prevent in enacting Section 28(e).

Based upon the above discussion, the executing broker under an RPA structure has a meaningful role and is not being used as a means to "conceal the payment" of client commissions to intermediaries that provide benefits only to the money manager. Indeed, MiFID

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[15] For an authoritative explanation of the SEC's guidance in this area, *see* 2006 Interpretive Release at 41994.

[16] *Id*.

[17] *Id*.

[18] In connection with research that is paid through the use of an RPA, MIFID II imposes restrictions on the operation of the RPA and how those assets may be used by the money manager that are designed to ensure that any amounts deposited into an RPA: (1) consist solely of research charges; (2) may be used solely to purchase eligible research services and (3) may not be used to purchase services that provide benefits only to the money manager. Under Article 13(1)(b)(i), the RPA may only be funded by a specific research charge to clients. If there is a surplus in the RPA at the end of a period, the money manager should have a process to rebate those funds to the client or to offset it against the research budget and research charge calculated for the following period. The money manager is permitted to delegate administration of the RPA to a third party, provided the arrangement facilitates the purchase of third party research and payments to research providers in the name of the money manager without undue delay in accordance with the money manager's instruction according to Article 13(1)(b)(iii). Money managers are required to establish a written policy that, among other things, addresses the extent to which research purchased through the RPA mechanism may benefit clients' portfolios according to Article 13(1)(b)(iv). Upon request, the money manager must also provide a summary of the providers paid from the RPA, the total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from the account compares to the budget set by the money manager for that period under Article 13(1)(b)(v).

II itself precludes such concealment by the extensive client involvement in establishing and monitoring the RPA budget and payments. For all of these reasons, we believe an executing broker that operates under an RPA in the manner described in this letter satisfies the "provided by" element of Section 28(e) consistent with the requirements of the 2006 Interpretive Guidance.

IV. Public Policy and Past Practice Support the Relief We Request

Both the client commission arrangement and RPA approaches to payment for research are predicated on a policy of ensuring that clients have transparency into the costs of receiving valuable services and ensuring that best execution standards are met. The SEC itself has spoken positively of the benefits of unbundled commissions. In its most recent guidance regarding Section 28(e), for example, the SEC recognized the benefits of unbundled commissions, albeit in a different way than that contemplated with RPAs.[19] In that guidance, the SEC said that unbundling a commission to make transparent the price of research would inform a money manager as to the market value of that research and help a money manager make its "good faith" determination under Section 28(e). The SEC went on to state that the separation of functions (*i.e.*, execution and research) or "unbundling" is beneficial to the money manager's clients.[20] RPAs provide a mechanism to support the unbundling of these costs, consistent with the SEC's statements in that release.

The relief we request also would preserve, in light of cross-border developments, the Congressional intent in enacting Section 28(e) of the Exchange Act. Congress enacted that safe harbor in the era in which fixed brokerage commissions were eliminated. The safe harbor reflects the value Congress placed on maintaining money managers' access to research considering their role in managing client accounts and supporting capital markets and capital formation.

Both the SEC and the staff have a strong record of clarifying the scope and application of Section 28(e) of the Exchange Act to adapt to market developments inside and outside the U.S. The SEC took reforms in the United Kingdom into account when it issued the 2006 Interpretive Release. Importantly, the SEC stated that its goal in issuing that guidance was to provide "maximum flexibility" for money managers to use client commissions to seek best execution of trades while obtaining "valuable research."[21] The relief we request squarely falls within this goal established by the SEC.

While the relief we request is quite modest, the SEC and the staff have many examples of more broadly revisiting the meaning of the terms used in Section 28(e), in response to market developments. In 2001, for example, at the request of The Nasdaq Stock Market, the SEC recognized modifications in trade reporting rules and broadened the interpretation of the term

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[19] 2006 Interpretive Release.

[20] The SEC supported the idea that the research function is separate from execution and is a valuable service provided to managed accounts. In the July 2006 Release, the SEC stated that ". . . efficient execution venues provide good, low-cost execution while research providers offer valuable research ideas that can benefit managed accounts. We believe that this separation of functions is beneficial to the money managers' clients . . . ." *Id.* at 41992-41993.

[21] *Id.*

"commission" by clarifying "that the term 'commission' for purposes of the Section 28(e) safe harbor encompasses, among other things, certain transaction costs, even if not denominated a 'commission.'"

Past practice by the SEC and the staff during previous changes in the market environment, bolstered by the legislative purpose behind Section 28(e), call for the staff to act now to aid money managers (and broker-dealers) in their compliance with MiFID II.

V. Representations

In light of the foregoing, we seek assurances that the SEC will not recommend enforcement action to the Commission if a money manager or other fiduciary relies on Section 28(e) with respect to payments for research under an RPA, as described in this letter, and subject to the following representations:

- The money manager makes payments to the executing broker out of client assets for research alongside payments to that executing broker for execution.
- The research payments are for research services that are eligible for the safe harbor under Section 28(e).
- The executing broker effects the securities transaction for purposes of Section 28(e).
- The executing broker is legally obligated by contract with the money manager to pay for research through the use of an RPA in connection with a client commission arrangement.

VI. Conclusion

We urge the staff to issue the relief we request, which we respectfully submit is squarely consistent with public policy. By issuing the relief we request, the SEC staff will preserve the Congressional intent that led Congress to enact Section 28(e) of the Exchange Act. The staff will also provide much needed assistance to many market participants as they develop global programs for compliance with MiFID II.

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We thank you for the opportunity to submit this no-action request would be pleased to discuss any of these matters.

Sincerely,

Timothy W. Cameron, Esq.
Asset Management Group - Head
Securities Industry and Financial Markets Association

Lindsey Weber Keljo, Esq.
Managing Director and Associate General Counsel
Asset Management Group
Securities Industry and Financial Markets Association

cc: Paula Jenson, Deputy Chief Counsel
Jo Anne Swindler, Assistant Chief Counsel
Division of Trading and Markets

Doug Scheidt, Chief Counsel
Sara Crovitz, Deputy Chief Counsel
Division of Investment Management

David Blass
Nicole Trudeau
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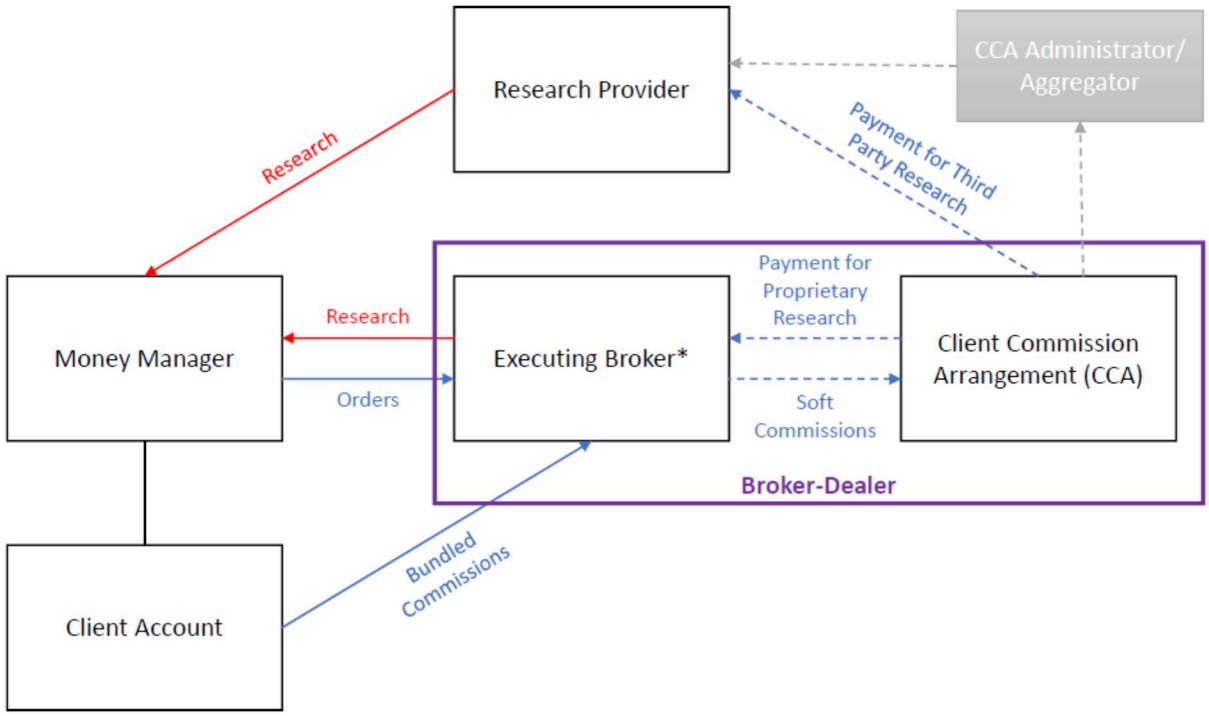
Attachment A

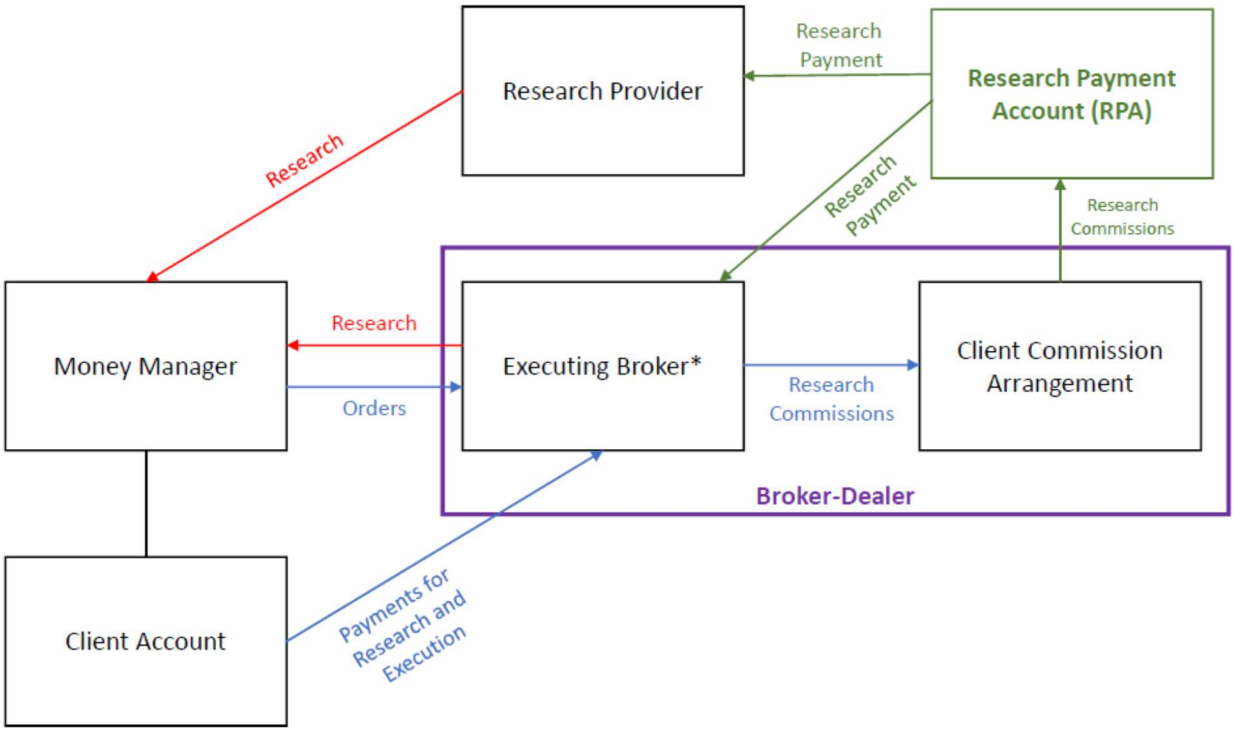
Client Commission Arrangement Model



* Executing broker retains execution portion of commission for execution services provided.

Attachment B

Research Payment Account Model



* Executing broker retains execution portion of commission for execution services provided.