



EYE ON GEMINI



FULCRUM FEES

Did you know mutual funds can charge an incentive fee, but advisors may charge fulcrum fees? Advisors who manage accounts for investment companies or accounts with a value greater than \$1 million, if those accounts are not for trusts or retirement plans qualify. A fulcrum fee provides the advisor with additional compensation for outperforming a broad-based index such as the S&P 500 and less compensation for under performing the index. The amount of the additional compensation received for outperforming the index must be equal to the amount of compensation that would be lost for underperformance. The index used as the basis to determine the advisor's performance must contain similar securities and risks.

Gemini is currently servicing an eleven fund complex that utilizes a fulcrum fee and can calculate the fee systematically each day. Contact your friendly Gemini representative for more information.

SEC GUIDANCE ON SOFT DOLLARS

On July 24, 2006, the Securities and Exchange Commission published an interpretive release with respect to the scope of "brokerage and research services" and client commission arrangements under Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act"). Market participants may continue to rely on the Commission's prior interpretations of Section 28(e) until January 24, 2007.

Section 28(e) of the Exchange Act establishes a safe harbor that allows money managers to use client funds to purchase "brokerage and research services" for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. In this release, the release provides interpretive guidance with respect to the safe harbor, with the particular goal of clarifying the scope of "brokerage and research services" in the light of evolving technologies and industry practices.

The release interprets the scope of the safe harbor as follows:

- "Research services" are restricted to "advice," "analyses," and "reports" within the meaning of Section 28(e)(3).
 - Physical items, such as computer hardware, which do not reflect the expression of reasoning or knowledge relating to the subject matter identified in the statute, are outside the safe harbor.
 - Research related to the market for securities, such as trade analytics (including analytics available through order management systems) and advice on market color and execution strategies, are eligible for the safe harbor.
 - Market, financial, economic, and similar data could be eligible for the safe harbor.
 - Mass-marketed publications are not eligible as research under the safe harbor.
- "Brokerage services" within the safe harbor are those products and services that relate to the execution of the trade from the point at which the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution, through the point at which funds or securities are delivered or credited to the advised account.
- Eligibility of both brokerage and research services for safe harbor protection is governed by the criteria in Section 28(e)(3),14 consistent with the Commission's 1986 "lawful and appropriate assistance" standard.
- Mixed-use items must be reasonably allocated between eligible and ineligible uses, and the manager must keep adequate books and records concerning allocations so as to enable the manager to make the required good faith determination of the reasonableness of commissions in relation to the value of brokerage and research services.
- In order for the safe harbor to be available to the money manager, the following principles apply:
 - Broker-dealers that are parties to arrangements under Section 28(e) are involved in "effecting" the trade if they execute, clear, or settle the trade, or perform one of four specified functions and allocate the other functions to another broker-dealer.
 - Broker-dealers "provide" the research if they (i) prepare the research, (ii) are financially obligated to pay for the research, or (iii) are not financially obligated to pay but their arrangements have certain attributes.

The Release reiterates the statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion.

NEWS FLASH...THIS JUST IN...

The SEC has extended the deadline to comply with Rule 22c-2 by six months. The rule was originally to take effect October 16, 2006. We are continuing our work with Envision to prepare for the deadline.

GEMINI SUCCESSES

Thank you to MD SASS for bringing another fund to our family. Congrats to Alpha and Biltmore for their funds becoming effective.

TRIVIA QUESTION

The answer to last months question 'Who was the American President who said, "The business of America is business"' was: Calvin Coolidge.

How many shares were traded on March 16, 1830, the quietest day in the history of the NYSE? Stay tuned for the answer in next months edition!