(4) HPC Serial Number, and HPC time and cycles since new and since compressor overhaul at the time of the test.

(5) Results of the test (Pass/Fail).

Documents That Have Been Incorporated by Reference

(r) The inspection shall be done in accordance with the following Pratt & Whitney service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	November 8, 2001.
	3	Original	June 27, 2000.
	4	1	November 8, 2001
	5–12	Original	June 27, 2000.
Total pages: 12.			
PW IEN 96KC973D	All	Original	October 12, 2001.
Total pages: 19.			
PW TR 71–0026	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0018	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0035	All	Original	November 14, 2001.
Total pages: 24.			
PW CIR 51A357, Section 72–35–68, Inspection/Check–04, Indexes 8–11.	All	Original	September 15, 2001.
Total pages: 5.			
PW CIR 51A357, Section 72–35–68, Repair 16	All	Original	June 15, 1996.
Total pages: 1.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(s) This amendment becomes effective on January 17, 2002.

Issued in Burlington, Massachusetts, on December 12, 2001.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31296 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–45194]

Commission Guidance on the Scope of Section 28(e) of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing interpretive guidance on the application of Section 28(e) of the Securities Exchange Act of 1934 (''Exchange Act''). This section provides a safe harbor to money managers who use the commission dollars of their advised accounts to obtain research and brokerage services. The guidance we are publishing today clarifies 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.''

EFFECTIVE DATE: The guidance is effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Joseph Corcoran, Special Counsel, (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

If money managers use commission dollars of their advised accounts to obtain research and brokerage services, Section 28(e) prevents them from being held to have breached a fiduciary duty, provided the conditions of the section are met.[1] Previously, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an ''agency'' capacity.[2] That interpretation prevented money managers from relying on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a ''principal'' capacity.

The Nasdaq Stock Market, Inc. (''Nasdaq'') asked us to reconsider this interpretation of Section 28(e). In particular, Nasdaq urged us to interpret the Section 28(e) safe harbor to apply not just to research and brokerage services obtained in relation to commissions on agency transactions, but also to such services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. (''NASD'') members and reported under certain NASD trade reporting rules.[3] In Nasdaq's view, the recent amendments to its trade reporting rules for certain riskless principal transactions support a modification of the Commission's interpretation of Section 28(e).[4]

[1] 15 U.S.C. 78bb(e).

[2] Investment Advisers Act Release No. 1469 (February 14, 1995), 60 FR 9750 (February 21, 1995). In this release, the Commission stated, ''[t]he safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions,'' adopting a position originally outlined in a 1990 staff letter, authorized by the Commission, to the Department of Labor. *See* Letter re: *Section 28(e) of the Securities Exchange Act of 1934* (July 25, 1990). *See also* Investment Company Act Release No. 20472 (August 11, 1994), 59 FR 42187 (August 17, 1994).

[3] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, Commission, dated September 7, 2001.

[4] *See* Exchange Act Release Nos. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (File No. SR–NASD–98–59); 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999) (File No. SR–NASD–98–08); 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000) (File No. SR–NASD–00–52). These filing amended NASD Rules 4632 (the trade reporting rule for Nasdaq National Market securities), 4642 (the trade reporting rule for Nasdaq SmallCap Market securities), and 6420 (the trade reporting rule for eligible securities).

II. Discussion

Section 28(e) of the Exchange Act prevents a person who exercises investment discretion with respect to an account from being ''deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a [broker-dealer] an amount of commission for effecting a securities transaction in excess of the amount of commission another [broker-dealer] would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such [broker-dealer]. * * *'' [5]

This release clarifies the meaning of the term ''commission'' in the context of Section 28(e), and, therefore, the type of fees paid by a managed account to a broker-dealer for a securities transaction that may be used by the money manager to obtain research and brokerage services within the safe harbor. As noted above, the Commission to date has interpreted the term ''commission'' to include fees paid by a managed account to a broker-dealer for effecting a transaction in an agency capacity. This interpretation is based on the understanding that the term ''commission'' generally connotes an agency transaction.[6] However, that interpretation is not mandated by the language of the statute. In fact, the reference to ''dealer'' in Section 28(e) might suggest that the term ''commission'' includes fees paid to a broker-dealer acting in other than an agency capacity.

The meaning of the term ''commission'' in Section 28(e) is informed by the requirement that a money manager relying on the safe harbor must determine in good faith that the amount of ''commission'' is reasonable in relation to the value of research and brokerage services received. This requirement presupposes that a ''commission'' paid by the managed account is quantifiable in a verifiable way and is fully disclosed to the money manager. When we issued our guidance in 1995, an agency transaction had more cost transparency than a principal transaction because frequently embedded within the cost of a principal transaction was undisclosed compensation to the dealer. In other words, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.

Since that time, the NASD has modified its trade reporting rules for certain riskless principal transactions. Currently, NASD Rule 4632 (applicable to Nasdaq National Market securities), NASD Rule 4642 (applicable to Nasdaq SmallCap Market securities), and NASD Rule 6420 (applicable to ''eligible securities'') require a riskless principal transaction in which both legs are executed at the same price (''Eligible Riskless Principal Transaction'') to be reported once, in the same manner as an agency transaction, exclusive of any markup, markdown, commission equivalent, or other fee.[7] Coupled with Exchange Act Rule 10b–10, this form of trade reporting means that a money manager agreeing to an Eligible Riskless Principal Transaction receives the same price as received in the offsetting trade and that this price is disclosed on a confirmation that also fully discloses the remuneration to the NASD member for effecting this transaction.[8] Thus, a money manager opting for an Eligible Riskless Principal Transaction would now be informed of the entire amount of a market maker's charge for effecting the trade.

In recognition of the transparency achieved in the Nasdaq market for certain riskless principal transactions, which allows a money manager to make the necessary determination under Section 28(e), we are modifying our interpretation of Section 28(e). Specifically, we now interpret the term ''commission'' in Section 28(e) of the Exchange Act to include a markup, markdown, commission equivalent or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight.

Fees paid for Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.[9] Fees paid to an NASD member for effecting an Eligible Riskless Principal Transaction are distinguishable from fees paid on traditional riskless principal transactions as well as traditional principal transactions involving a dealer's inventory. Fees on other riskless principal transactions can include an undisclosed fee (reflecting a dealer's profit on the difference in price between the first and second legs of the transaction). Fees on traditional principal transactions also can include an undisclosed fee based on some portion of the spread. In addition, the price of the trade, if reported, is to some degree within the control of the dealer. In contrast, fees on Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 must be fully and separately disclosed. Moreover, the price of the trade is validated by the offsetting leg of the transaction.

Required disclosure of fees under confirmation rules and reporting of the trade under self-regulatory organization rules at a single price for both offsetting transactions, which provides independent verification of this price, give money managers information about fees and trade prices sufficient to make the determination of reasonableness of these charges. It is therefore reasonable to treat such fees as a ''commission'' for purposes of Section 28(e) only. As other markets develop equivalent regulations to ensure equivalent transparency, transaction charges in those markets that meet the requirements of this interpretation will be considered to fall within the interpretation.

[5] 15 U.S.C. 78bb(e). *See also* Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004 (April 30, 1986).

[6] In adopting the position in 1995 that Section 28(e) does not encompass principal transactions, we noted a 1990 staff letter to the Department of Labor. In that letter, the Division of Market Regulation stated that, ''Section 28(e) refers to 'commissions' only, which connote transactions effected on an agency basis, and does not refer to markups or markdowns, which would more clearly have suggested that Congress intended to extend the safe harbor to principal transactions.'' *See supra* note 2.

[7] *See* NASD Rules 4632(d)(3)(B) (for Nasdaq Market securities), 4642(d)(3)(B) (for Nasdaq SmallCap Market securities), and 6420(d)(3)(B) (for eligible securities). Each of these rules defines a riskless principal transaction as a ''transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.''

[8] Exchange Act Rule 10b–10(a)(2)(ii), 17 CFR 240.10b–10(a)(2)(ii). Nasdaq SmallCap Market securities are subject to Exchange Act Rule 10b–10. *See* Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[9] Riskless principal transactions in the debt market, however, are not currently subject to confirmation and reporting requirements that meet these conditions, under either NASD or Commission rules, and therefore would not be within the Section 28(e) safe harbor. Such transactions do not afford money managers the level of transparency necessary to determine if the remuneration paid is reasonable in relation to the value received, as required to rely on Section 28(e). The interpretation does not currently extend to other securities that may have similar reporting requirements, but that do not have the same confirmation requirements for market makers, *e.g.*, OTC Bulletin Board stocks, Pink Sheet stocks, and convertible securities.

III. Conclusion

For the foregoing reasons, we find that this interpretation is consistent with Section 28(e) of the Exchange Act and the requirements of that section.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. Part 241 is amended by adding Release No. 34–45194 and the release date of December 27, 2001 to the list of interpretative releases.

Dated: December 27, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32199 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8975]

RIN 1545–BA21

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 2, 2002.

Applicability Dates: For dates of applicability, see §§ 1.337(d)–6T(e) and 1.337(d)–7T(f).

FOR FURTHER INFORMATION CONTACT: Lisa A. Fuller, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, i.e., to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514, 100 Stat. 2085, 2272), as amended by section 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342, 3400–01), amended the Internal Revenue Code (Code) to repeal the *General Utilities* doctrine. In particular, the 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to ''ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *'' Absent special rules, the transfer of property owned by a C corporation to a RIC or REIT could result in permanently removing the property's built-in gain from tax at the corporate level, because RICs and REITs generally are not subject to tax on income that is distributed to their shareholders.

On February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486) announcing its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that, except as provided in the Notice, the regulations would not affect the characterization for tax purposes of, or the tax treatment of parties to, any transactions to which they apply. For example, shareholders of a C corporation who received RIC shares in a transaction that qualified as a reorganization under section 368(a)(1)(C) would not recognize gain or loss solely because the C corporation was subject to tax. The Notice also provided that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987. Notice 88–96 (1988–2 C.B. 420), amplifies Notice 88–19 by