

T. ROWE PRICE ASSOCIATES, INC.

DAVID OESTREICHER
Vice President
Chief Legal Counsel

WWW.TROWEPRICE.COM

P.O. Box 89000
Baltimore, Maryland
21289-1020

100 East Pratt Street
Baltimore, Maryland
21202-1009

Phone 410-345-2628
Fax 410-345-6575

david_oestreicher@troweprice.com

October 1, 2008

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices (the "**Guidance**"), SEC Rel. No. IA-2763

Dear Ms. Harmon:

T. Rowe Price Associates, Inc. and its affiliated registered investment advisers (collectively, "**T. Rowe Price**")¹ appreciate the opportunity to provide comments to the Securities and Exchange Commission (the "**Commission**") regarding the Guidance and related rules under the Investment Advisers Act of 1940. In addition to supporting the comments of the Investment Adviser Association and the Investment Company Institute, we offer some suggestions and comments on the Guidance below.

1. The Guidance on Board Oversight of an Investment Adviser's Use of Fund Brokerage Commissions Creates Confusion

Section 28(e) of the Securities Exchange Act of 1934 ("Section 28(e)" or "28(e)") expressly provides that a fiduciary shall not have acted unlawfully or breached a fiduciary duty solely by reason of having caused the account to pay a broker-dealer an amount of commission for effecting securities transactions in excess of the amount of commission another broker may have charged for effecting that transaction provided such fiduciary determines in good faith that such commissions were reasonable in relation to the value of brokerage and research services provided. Section 28(e) goes further to state that the investment adviser can make such determination in terms of either that particular transaction or with a view to its overall responsibilities with respect to the accounts over which it has investment discretion. The Commission should predicate its guidance regarding fund brokerage and soft dollar practices with an acknowledgment of the ongoing validity of this statutory protection. Instead, the

¹ T. Rowe Price Associates, Inc., a wholly-owned subsidiary of T. Rowe Price Group, Inc., together with its advisory affiliates, had \$400 billion of assets under management as of December 31, 2007. T. Rowe Price has a diverse, global client base, including institutional separate accounts, T. Rowe Price sponsored and sub-advised mutual funds, and high net worth individuals. The T. Rowe Price group of advisers includes T. Rowe Price Associates, Inc., T. Rowe Price International, Inc., T. Rowe Price (Canada), Inc., T. Rowe Price Global Investment Services Limited, and T. Rowe Price Global Asset Management Limited.

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INVEST WITH CONFIDENCE

Guidance appears to confuse the long standing practices afforded by the protections offered under Section 28(e). It further appears to encourage boards to limit or end an adviser's soft dollar practices.² A fund board should be able to rely on the fact that if an investment adviser is within the safe harbor of Section 28(e) then the fund board satisfies its fiduciary duty by reviewing the adviser's policies, practices and procedures for compliance with Section 28(e). In fact, the Commission affirmed soft dollar practices as recently as 2006 when it clarified the scope of 28(e) in light of modern trading technologies as well as provided guidance on what falls within the definition of "brokerage and research services".³

The Guidance seems to set forth a separate set of requirements and standards that fund directors must adhere to in order to satisfy their fiduciary duty even when the investment adviser has the protection of Section 28(e). In particular, the Guidance seems to throw into question the use of client commissions to obtain research for other clients of the adviser even though Section 28(e) specifically allows for this practice. The Commission should consider that the industry practice is for advisers to obtain research with soft dollars to benefit all their clients and not itemize research received on a client-by-client basis. We suggest that the Guidance needs to be more balanced in proposing relevant information and the focus should be on allowing fund boards the flexibility to request information to help a board understand an adviser's practices and satisfy itself that the adviser is in compliance with Section 28(e). As drafted, we believe the complexity and requirements of the Guidance places an unfair burden and expectation on fund directors.

2. Checklist approach

The Guidance notes that "to assist" the board in understanding the adviser's practices with respect to fund brokerage commissions and soft dollars, it *should* ask the adviser to inform it on numerous matters.⁴ We would suggest that the SEC clarify that the checklist approach mentioned in this section of the Guidance is suggestive and not required. We are concerned that the SEC is mandating that the board require advisers to provide all the information set forth under "*D. An Investment Adviser's General Fiduciary Obligations to Clients that Are Funds When Using Soft Dollars*"⁵ of the Guidance. Again we reiterate that fund boards should be able to take comfort in the fact that Section 28(e) affords the investment adviser a mechanism for engaging in soft dollar practices and provided the board gathers enough information from the adviser to assure itself that its adviser has sufficient policies related to 28(e) compliance, the board should not need to delve into the technical intricacies of the

² Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices, SEC Rel. No. IA-2763 (July 30, 2008) ("Release") at 25 n. 68, 28, 32.

³ Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, SEC Rel. No. 34-54165 (July 18, 2006).

⁴ Release at 29.

⁵ Release at 29-31.

adviser's trading practices and specific transaction by transaction information.⁶ We further suggest that boards will need to gather different information depending upon a number of factors, including the nature of the investment adviser's business, types of funds managed, business lines and practices to evaluate an adviser's 28(e) compliance policies.

3. Proper Disclosure Vehicle

We would ask the Commission to consider how other regulators have addressed soft dollar disclosure, specifically the industry developed disclosure regime that emerged in tandem with the United Kingdom's Financial Services Authority rules relating to commission sharing arrangements. We believe this method of disclosure provides an appropriate level of detail related to an investment adviser's trading practices. We believe the harmonization of global disclosure would be welcomed in the marketplace by both investment advisers and fund boards. We request that the Commission recognize that consolidated forms of disclosure such as Form ADV Part II and other policy and procedure documents of investment advisers, if sufficiently detailed, could also serve as a standard form of disclosure. We agree that fund directors should have unfettered discretion to request additional information to satisfy their obligations but should not feel compelled to ask for supplemental information if the investment adviser's standard disclosures are sufficient to enable the fund directors to understand the adviser's trading practices.

T. Rowe Price appreciates your consideration of our comments on the Guidance. Please do not hesitate to contact us if we may provide additional information or assistance to you regarding these matters.

Sincerely,



David Oestreicher
Vice President and Chief Legal Counsel

cc: The Honorable Christopher Cox, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar

⁶ For example, the Guidance states that "In directing the adviser, the board also should consider such matters as:...(ii) whether it is appropriate for the adviser to use fund brokerage and research services on some or all trades;...". In order for a board to determine such a direction, it would most likely need to scrutinize numerous transactions of the adviser on a trade-by-trade basis. Such analysis would not necessarily be the most productive use of a board's time and in the best interest of the fund. See Release at 32.