

AXA PREMIER VIP TRUST

October 1, 2008

Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: *Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices, Release Nos. 34-58264; IC-28345; IA-2763, File No. S7-22-08*

Dear Ms. Harmon:

AXA Premier VIP Trust¹ appreciates the opportunity to comment on the Securities and Exchange Commission's proposed guidance to boards of directors of registered investment companies to assist them in fulfilling their fiduciary responsibilities with respect to overseeing the trading of investment company portfolio securities ("Guidance"). The Guidance provides a framework for an investment company board ("Board") in overseeing the best execution obligations of the investment adviser hired to invest in securities and other instruments on the investment company's behalf. Overall, we agree with the Commission's intent to outline, in general terms, appropriate matters for a Board to consider in fulfilling its oversight responsibilities with respect to the portfolio trading conducted by an investment adviser.

As a preliminary matter, we question the timing of the Guidance because the trend that we observe, with respect to the Trust for which we exercise oversight, is that trading costs have been trending consistently downward. In addition, as noted in the Guidance² and as reinforced by our observations in monitoring the Trust's portfolio trading, the utilization of alternative trading venues such as ECNs and algorithmic trading systems has been increasingly prevalent. We are unaware of any general issues or concerns in the investment company industry that would necessitate the issuance of the Guidance at this time.

As we understand the Guidance, there are two broad areas on which the Commission provided guidance (i) oversight of adviser trading and 'best execution' obligations and (ii) oversight with respect to Section 28(e) compliance. With respect to the oversight of adviser

¹ AXA Premier VIP Trust (the "Trust") is a registered open-end investment company under the Securities Act of 1933, as amended ("1933 Act") and the Investment Company Act of 1940, as amended. As of December 31, 2007, the Trust has 22 portfolios and total assets of approximately \$45 billion. Each portfolio is a separate series of the Trust and has its own investment objective, investment strategies and risks. One or more sub-advisers furnish the day-to-day portfolio management for each portfolio. Currently, 26 sub-advisers have been retained on behalf of one or more portfolios to provide such services. The Trust's shares are currently sold only to insurance company separate accounts in connection with variable life insurance contracts and variable annuity certificates and contracts issued or to be issued by AXA Equitable Life Insurance Company or other affiliated and unaffiliated insurance companies.

² Fn. 45 of the *Guidance*.

trading, the Commission framed a Board's obligations in terms of its fiduciary duties to investment companies and spent a great deal of time describing some of the legal intricacies involved in fulfilling such a duty. The Guidance also devoted sufficient attention to describing an adviser's duty to seek 'best execution.' It is worth noting that the term 'best execution' is an elusive concept described by the Commission as "the most favorable execution terms reasonably available given the specific circumstances of each trade."³ In addition, the Investment Company Institute has noted "there is no specific definition of "best execution" under the securities laws."⁴ However, it appears as though the Guidance attempts to identify the defining characteristics of something that has been, as a practical matter, indefinable. That attempt, coupled with the Guidance's overarching discussion of Trustee fiduciary duty, leads one to the reasonable conclusion that a director's fiduciary duty with respect to its oversight of an adviser seeking 'best execution' could be fulfilled most assuredly by defining 'best execution' in the context of the laundry list of considerations noted in the Guidance. Seeking best execution could aptly be described as more 'art than science.' Formalizing considerations for a Board to make in its oversight or an adviser's trading activities may place unnecessary, additional burdens on the Board and unduly restrict an adviser's trading activity with no significant additional protection to fund shareholders.

We note the language in the Guidance stating that it "would not impose any new or additional requirements." We find that statement however contrary to footnote 68 of the Guidance indicating "board determinations regarding the purchase of brokerage and research services with fund brokerage commissions should be made in accordance with the fund's best interest." While we agree with the discussion of general fiduciary law principles contained in the Guidance, the footnote indeed seems to impose an additional requirement particularly related to trading oversight and Section 28(e). We are unaware of any current requirement related to "a fund's best interest" in connection with Section 28(e). In fact, any such additional requirement may be at odds with the language in Section 28(e) stating that adviser's transactions may be viewed in terms of either a particular transaction or the adviser's overall responsibilities with respect to the accounts as to which he exercises investment discretion. Footnote 68 and its new requirement places the Board's oversight focused on the particular interest of *that fund's* shareholders against the statutorily protected actions of the adviser engaging in transactions viewed through the prism of an adviser's *overall responsibilities with respect to its accounts under management*. One could easily envision the Guidance being a divisive development between advisers and Boards whereby advisers may be proscribed from engaging in soft dollar transactions, to the detriment of shareholders, despite such trades being protected by statute.

More particular to our circumstance of overseeing a subadvised mutual fund complex, we note that the Guidance did not in great detail address the concerns of Boards of subadvised funds. The Guidance noted that Boards of subadvised funds should consider "how the adviser provides oversight and monitors each sub-adviser's activities, including the trading intermediary selection process." It is unclear if this consideration is the sole consideration a Board of a subadvised fund complex should consider in fulfilling its fiduciary duties or, if in fulfilling its fiduciary duties, the Board should consider each of the factors enumerated in the Guidance. With respect to the conflict discussed above between a Board's oversight of a particular fund and an adviser engaging in soft dollar transactions using brokerage commissions of its multiple clients in accordance with Section 28(e), the subadvised context results in a more clearly defined conflict.

³ *Disclosure of Order Execution and Routing Practices* Rule No. 34-43590 (November 27, 2000).

⁴ *Frequently Asked Questions About "Best Execution"* Investment Company Institute, January 2004.

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It would appear that a Board would find great difficulty in determining with any degree of certainty that soft dollar transactions were made in the best interest of a particular fund when the fund is only one client of an adviser that may use that fund's brokerage to obtain research benefiting a number of other clients that could differ in size and ability to generate commissions. More clarity in the application of the Guidance to Boards overseeing subadvised funds would be greatly appreciated if the Guidance is adopted in a form similar to that proposed.

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We appreciate the Commission's consideration of these comments. If you have any questions or would like additional information, please do not hesitate to contact me at 212 314-5718 or Patricia Louie, Secretary of the Trust, at 212 314-5329.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Joenk". The signature is fluid and cursive, with a large loop at the end.

Steven M. Joenk
Chair, Chief Executive Officer and President

cc: Board of Trustees of AXA Premier VIP Trust
Patricia Louie, Esq.