

**Dear Chairman Cox: I've copied and pasted an email (below) which I sent this afternoon to several members of the press, several third-party research providers, several third-party broker dealers and some securities lawyers. In the context of soft dollars and today's Proposed Guidance for institutional investment fund board members, I believe it's very important that the true size and financial impact of soft dollar brokerage be acknowledged and emphasized. Furthermore, during the July 12, 2006 Sunshine Meeting at which the "Commission Guidance Regarding The Appropriate Use of Client Commissions Under Section 28(e) of the Securities Exchange Act of 1934" was approved and released, it was stated that soft dollars used to purchase third-party services would no longer be treated differently than soft dollars used to purchase *proprietary* research (and other services) from brokerage firms. And, at that Sunshine Meeting several commissioners and staff members mentioned that a "second wing" of interpretive guidance would soon be released to provide guidance to the industry on the disclosure and transparency of brokerage commissions and services in *all* institutional brokerage arrangements. In July of 2007, U.S. Senator Charles Schumer reminded you that you had agreed to that the second wing of guidance on disclosure and transparency and that "fund boards and trustees were eager to receive such guidance so they could discharge their fiduciary obligations". The verbal description of the Proposed Guidance which I watched this morning did not seem to provide any guidance on disclosure, transparency or the identification of proprietary services offered in bundled undisclosed brokerage arrangements. It seems to me that absent specific disclosure and identification of such services it's difficult, if not impossible for regulators, fund board members or institutional investors to discern if brokerage commissions are being used in compliance with Section 28(e) and or fiduciary propriety. It also should cause one to wonder how soft dollars used to acquire brokerage firms' proprietary research and services can possibly be treated with equal scrutiny as compared to third-party fully disclosed investment research.**

---

**From:** Bill George [mailto:bgeo@earthlink.net]  
**Sent:** Wednesday, July 30, 2008 1:11 PM  
**To:** Recipients, Undisclosed  
**Subject:** Soft Dollars and Sunshine

During today's SEC "Sunshine Meeting" Chairman of the SEC Christopher Cox stated, in his opening comments (prior to the presentation of the Proposed Guidance to fund directors regarding fund advisors' uses of fund investors brokerage commissions) that the use of soft dollars by institutional investment advisors now totals approximately "one billion dollar per year".\* This is a misstatement.

Section 28(e) of the Securities Exchange Act of 1934 describes soft dollars as any brokerage commissions paid-up above the fully-negotiated costs of brokerage execution. An analysis of the annual average of all tangible institutional brokerage execution related costs, as compared to the annual brokerage commissions paid by institutional advisors puts the true annual cost of soft dollar brokerage (in recent years) at something over ten billion dollars per year.

For years investment consulting organizations and investment advisors have been misrepresenting and misreporting the institutional investment advisory industry's use of soft

dollars. They have only reported soft dollars spent for fully-disclosed (transparent) third-party investment research. They make no attempt to account for soft dollar commissions used to purchase brokerage firms' proprietary research and other proprietary services which are not disclosed or transparent, and which may not qualify for the safe harbor of Section 28(e) and which may even be outside an advisors' fiduciary authority. Without disclosure it's impossible to determine if these commissions paid-up above the costs of fully-negotiated brokerage commissions are appropriate, or if they are used as monetary inducements contributing to conflicts of interest which do not accrue to the direct benefit of the advised funds' investors.

The archive of this SEC Sunshine Meeting will soon be posted at  
> <http://www.connectlive.com/events/secopenmeetings/>

The section of the meeting at which the above proposed guidance was submitted and discussed begins at around 1 hour 15 minutes (you can drag your media player "slider" to that point in the meeting).

Best regards,

Bill George