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August 13, 2008

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Subject: File No. S7-22-08 (proposed interpretive guidance on portfolio trading practices)

Dear Securities and Exchange Commission:

This proposed guidance stresses the importance of "best execution" and the obligation of fund directors and fund boards to monitor portfolio transactions for "best execution". As a consequence of my background dealing with institutional investment research, when I encounter phrases which include the words "best execution" I immediately think of U.S. Supreme Court Associate Justice Potter Stewart's attempt to define hard-core pornography and obscenity. Justice Potter wrote, "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [hard-core pornography]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it . . . ."[1]

If you discuss execution quality (or best execution) with professional institutional traders who perform the portfolio transactions covered by this proposed guidance you will soon discover that among traders "best execution" has an equally subjective definition. Even the Investment Company Institute (ICI) seems at a loss to adequately define "best execution".[2] And, if you discuss "best execution" with individuals involved in the development of methodologies and tools to measure transaction costs you will discover some very creative approaches for measuring execution costs and "best execution". It's unfortunate; however, that those who have developed these creative approaches cannot agree that any one approach for measuring best execution is superior to all other approaches.[3] The weakness of such subjective definitions of evaluative criteria should be obvious; if it's not obvious you might want to read this footnoted article.[4]

Professional securities traders spend a lot of their waking hours thinking about and discussing "best execution". Before and after each significant trade they analyze the details of the trade and theorize on how the execution might have been improved by employing different tactics (breaking-up the trade, presenting segments of the trade at different times in different venues, speeding-up or slowing down the pace of segmented trading, etc). Traders' skill is constantly evaluated by their peers, by counterparties and by supervisors and "best execution" is a very important component in traders' periodic performance evaluation, periodic bonuses and career advancement. Consequently,

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[1] See Associate Supreme Court Justice, Potter Stewart's opinion on Jocobellis v. Ohio 378 U.S. 184 (1964) at > http://en.wikiquote.org/wiki/Potter_Stewart
[2] See the ICI statement on best execution at > http://www.ici.org/funds/abt/faqs_best_execution.html
[3] Do a key word search on: Securities Transaction Cost Analysis
[4] From **Philosphers' Playground** Paging Justice Stewart: Are Romance Novels Porn for Middle Aged Women? at > http://philosophersplayground.blogspot.com/2007/10/paging-justice-stewart-are-romance.html

professional traders have deep understanding of transaction cost analysis, and "best execution", and they have significant skill at posturing the conditions of each trade and presenting their case for the quality and consistency of their talents for receiving "best execution". Typically most fund directors haven't worked on an institutional trading desk, so, in general, they are poorly equipped to evaluate or debate "best execution" with traders at institutional investment advisory institutions. In this proposed guidance it seems the repeated emphasis on the subjective and implicit character of "best execution" reinforces the practice of paying-up in institutional clients' brokerage commissions to reward the transacting counterparty trader for delivering a service which is difficult to objectively measure or quantify (best execution). And it seems to invite conflicted behavior and brokerage commission abuse under the explanation, or guise, of paying-up to insure "best execution". Most institutional security traders resist any attempt to monitor or restrict their discretionary uses of soft dollars because they realize such efforts negatively affect the economics of the investment advisory and brokerage industry and that such economic changes trickle down to their personal compensation.

It seems questionable that such apparent liberal uses of institutional clients' soft dollars are necessary to actually induce a market culture providing "best execution". It would seem that executing brokerage firms' competition for institutional advisory funds' order flow would continue to be quite vibrant, even if commissions paid-up above the fully-negotiated costs of execution (*aka* soft dollars) were unbundled, disclosed, and evaluated for regulatory compliance and fiduciary appropriateness – and greatly reduced.[5]

In the "Sunshine Meeting"[6] at which this proposed guidance was announced and discussed it was mentioned that this proposed guidance is the result of a nearly two year outreach program during which senior members of the SEC's Division of Investment Management visited fund directors, attended fund board meetings, and discussed issues relating to the oversight responsibilities, of fund directors' and fund boards, for investment advisors' trading activities. I believe the quality of this proposed guidance could now be significantly improved with input from third-party brokers, and independent research providers and with input from individuals and organizations that represent the consumers of institutionally advised fund products. Some examples of such representatives are: Mercer Bullard, of FundDemocracy.com, Barbara Roper, Director of Investor Protection for the Consumer Federation of America, and Edward Siedle of BenchMarkAlert.com.

Thank you for providing the opportunity for public comment.

Sincerely,

Bill George

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[5] See, **TheStreet.com** article titled, The Seven Deadly Sins of 401K Plans Fifth Deadly Sin Excessive Fees - Disclosed and Hidden - published 9/22/2003 at >http://www.csimac.com/pdf/401ksins.pdf

[6] See, The SEC **Open Meeting** archive for Wednesday July 30, 2008 the discussion of S7-22-08 begins at 1 hour and 15 minutes of the webcast at > http://www.sec.gov/news/openmeetings.shtml