Proposed Rules Committee
United States of America Securities and Exchange Commission
Reference File No. S7-22-08

Dear Committee Members,

Thank you for the opportunity to comment on the "Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Advisor Portfolio Trading Practices".

The boards of directors of investment companies have a fiduciary responsibility for the overall performance of the funds under administration. Their oversight must address

- Portfolio Risk
- Adherence to Investment Style
- Investment Performance
- Conflicts of Interest between plan service providers and plan holders
- Costs

The "guidance" provided by the Commission Guidance document is comprehensive both in scope and detail as it pertains to "best execution" and "use of client trading commissions". However, this "guidance" is better directed at Advisers rather than Investment Company Boards of Directors, although it could be used by these Directors as a check-list in assessing Advisor procedures. In fact, most professional Advisers already provide this information on demand.

While it is important that Directors be aware of Adviser trading practices and use of commissions, they are not in a position to determine value added on a trade by trade basis. The multitude of considerations in determining value added by executing brokers and research providers makes it impossible for a Director who is <u>not involved in security selection</u> to assess or assign a dollar value to those services on a trade-by-trade basis.

This does not relieve the Board from responsibility to require their Advisers to provide evidence of best execution and justify their Commission Spend. However, to duplicate the monitoring of each trade only adds cost – not investor protection. Advisers should be charged with the responsibility to provide trading and commission allocation policies as well as audit trails that prove compliance with those policies. In this regard, the Guidance is useful to directors to insure that all considerations have been dealt with by the advisers. Director focus should be on adviser processes in dealing with trade execution and research costs. In other words, the focus should be on the forest rather than the trees.

One area that the Guidance did not address that may be helpful to investment fund and plan investors is disclosure of choices in inherent plan costs. The commission expense or cost of research for an actively managed plan is usually higher than for a passively managed plan. <u>Prominent disclosure of this fact</u> could help investors choose the investment fund or plan that is most suitable to their needs. If commission costs are of prime importance to investors, they should be made aware that passively managed plans may be more attractive to them where trades are done at an execution only commission rate. Otherwise, plan holders should expect that their active advisors will pay commissions for outside investment decision making services to help them identify trades that will enhance or preserve the value of the plan. This is a much better option than placing an adviser in a conflict situation where every time that they make a trade, they shrink their profit margin.

Finally, we would like to express our disappointment in seeing the Commission resort to the use of the term “soft dollar” in this Guidance with all its pejorative connotation and misunderstanding. The interpretive guideline on Client Commission Practices dismissed this term for good reason and it has no place in this Guidance. We strongly suggest that any Guidance directed at Advisers or Boards of Directors not use this term.

Respectfully Submitted,

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