September 30, 2008

Ms. Florence E. Harmon
U.S. 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 [Release No. 34-58264; IC-28345; IA-2763 File No. S7-22-08]

Dear Ms. Harmon:

BNY ConvergEx Group[1] is pleased to submit this letter in response to the U.S. Securities and Exchange Commission's proposed guidance and solicitation of comment on the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices (the "Proposed Guidance").

We applaud the Commission's efforts to assist fund directors by proposing guidance for fund directors to consider in performing the oversight responsibilities of their fund's investment adviser(s) and in determining what is appropriate in light of their fund's particular circumstances.

We are generally satisfied with the Commission's suggestions regarding a fund board's obligation to oversee both the trading practices of the fund's advisers and an adviser's use of fund brokerage, particularly as it relates to soft dollar arrangements. In particular, we are pleased that the Commission has proposed guidance that would not impose any new or additional requirements.

We agree with Commissioner Atkins' comments made at the Commission's Open Meeting on July 30th of this year when he pointed out that the Guidance should not result in a "checklist approach" but instead provide a broad framework of suggestions for directors to consider in light of each fund's specific circumstances. We believe a

[1] BNY ConvergEx Group comprises BNY ConvergEx Execution Solutions LLC; BNY Jaywalk LLC; ConvergEx Global Markets Ltd.; Eze Castle Software LLC; G-Trade Services LLC; LiquidPoint, LLC; and Westminster Research Associates LLC. BNY ConvergEx Group is committed to providing institutional clients, such as investment advisors, institutional investors and broker-dealers, with a broad range of global agency brokerage, commission management, independent research, transition management, trade order management and related investment technology solutions. Currently, we are one of the largest providers of agency execution Client Commission Arrangements ("CCAs") in the United States.

checklist approach would detract from the past progress that the Commission has made regarding the use of Client Commission Arrangements ("CCAs").

Additionally, however, we are somewhat surprised by the inaccuracies in the Proposed Guidance, specifically regarding the suggestion of perceived conflicts of interest associated with CCAs. This was unexpected given the past discussions around the SEC's Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, (Release No. 34-54165) in July of 2006 ("the 2006 Release") and the subsequent success and the broad acceptance of this guidance by the brokerage and investment management industries.

As an industry leader in the management of CCAs we have witnessed the success of the 2006 Release firsthand. The 2006 Release provided increased transparency around the use of commissions, removed the uncertainty regarding the use of commissions to acquire research and brokerage services that existed in the marketplace prior to the 2006 Release, fueled the growth of independent research and enhanced an adviser's ability to achieve best execution, benefitting both funds and their shareholders.

Our primary points regarding the Proposed Guidance are as follows:

- History suggests that there has always been confusion surrounding the term "soft dollars" and we specifically note that fund boards and even some advisers continue to consider the term "soft dollars" as a reference to third-party research, categorized separately from the larger pool of proprietary, sell-side research.[2] We believe the Commission should use this Proposed Guidance to reiterate its position that all research should be treated equitably and valued consistently, regardless of its origin.

  In the 2006 Release, the Commission clearly stated "the safe harbor encompasses third-party research and proprietary research on equal terms". This important point seems to be glossed over in the current release. On page 35, the Guidance suggests that "...information directors seek may range from simple reports on the cost of third-party soft dollar services to detailed reports on all portfolio security transactions..." This statement alone implies a separate treatment for alternate and independent third-party research, and perpetuates the myth to which some advisers and fund boards still mistakenly subscribe – that they are not engaged in soft dollar arrangements if they receive proprietary, sell-side research.

- While the Proposed Guidance addresses the issue of best execution, there is not a formal recognition of the industry-wide acceptance of Client Commission Arrangements (more commonly referred to as Commission Sharing Arrangements ["CSAs"] by industry participants when referring to the use of commissions to pay for research from broker-dealers), which have allowed advisers to separate the costs

[2] In the 2006 Release, the Commission specifically noted: "To avoid confusion that may arise over the usage of the phrase "soft dollars" in this release, the Commission uses the term "client commission" practices or arrangements to refer to practices under Section 28(e)."

of execution and research. Many advisers now use CSAs as a means of paying for research from broker-dealers with whom they may no longer wish to trade. Additionally, when structuring CSAs, more advisers are using alternative execution outlets, such as ECNs, ATSs, and agency brokers than ever before. This is an important new practice that speaks directly to the best execution issue.

- In describing potential conflicts of interest the Proposed Guidance appears to not recognize the basic premise that research acquired via Section 28(e) benefits the fund, not the adviser.

    - The Proposed Guidance suggests that the value of research received can be a factor in determining best execution. Additionally, the Proposed Guidance suggests that research received through fund brokerage should factor into the analysis of an adviser's compensation and the board's approval of that compensation under Section 15 (c). Both of these statements imply that the adviser is the beneficiary of the research which they acquire, when in fact research is used for the benefit of the fund and fund owners.

- The Proposed Guidance does not make clear that when addressing the issue of research costs there still remains the challenge that proprietary sell-side research is still largely un-priced and that there is no formal requirement in place to change this. It is therefore difficult to compare the amount spent on proprietary research with that spent on independent research. (We note that via the use of CSAs, advisers are now taking the initiative to determine the price of proprietary, sell-side research themselves.)

- The Proposed Guidance attempts to suggest that an adviser should allocate his use of research on an account by account basis. This is inconsistent with Congressional intent behind Section 28(e), which made clear that an account by account tracing was neither practical nor desirable. Additionally, as much of the research acquired by an adviser comes in the form of ideas and intellectual content, it is implausible that an accurate allocation can be made at all.

- The Proposed Guidance suggests that "the use of fund brokerage commissions to obtain research and other services may cause an adviser to avoid other uses of fund brokerage...such as establishing a commission recapture program or fund expense reimbursement program...." We point out that an adviser does not enter into these types of programs on a discretionary basis but instead is directed to do so by its plan sponsor clients and/or funds.

- In discussing the use of fund brokerage commissions to pay for research and brokerage services, we see no industry evidence that suggests advisers do not obtain best execution, as the Proposed Guidance suggests may be the case.

We believe that the 2006 Release and the current Proposed Guidance go a long way in helping advisors to manage any inherent conflicts of interest that may exist when managing money on behalf of multiple clients. We do however request that the Commission eliminate some of the inaccuracies and further clarify the misconceptions that we have addressed.

At this point, we do not feel that additional disclosure requirements for advisers will provide any meaningful benefits to either fund boards or investors. We are satisfied that existing practices and the delineation of the types of information that a board should request and analyze regarding the use of commissions, transactions costs and best execution protocols, as outlined in the Guidance, will provide boards and advisers with ample information to carry out their responsibilities. By simply publishing this report, the Commission will help to focus attention on the relevant issues of importance for both board directors and fund advisers. This approach has proved successful in the past.[3]

We thank the Commission for the opportunity to provide comments on the Proposed Guidance and would be happy to meet in person to discuss any of these issues with you at your convenience.

Very truly yours,

John D. Meserve
Executive Managing Director
BNY ConvergEx Group, LLC

cc: The Honorable Christopher Cox
The Honorable Luis B. Aguilar
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Troy A. Paredes
Andrew J. Donohue, Director, Division of Investment Management
David W. Blass, Assistant Director, Division of Investment Management

[3] In 1998 OCIE recommended publishing their Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds in order to "...Reiterate the guidance provided in the 1986 Release..." (Interpretive Release Regarding the Scope of Section 28(e) of the Securities Exchange of 1934 and Related Matters (Release No. 34-23170)) and other obligations of advisers as well as to "...Reiterate the obligation of investment companies' boards of directors to review all aspects of advisers compensation, including benefits received in soft dollar arrangements and for investment advisers to provide such information."