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These are additional comments on the proposed interpretive release 34-52635 on Section 28e of the Securities Exchange Act of 1934 as amended. (S7-09-05)

To elaborate on my comment letter of October 21, 2005, I would like to point out that when Section 28e was passed by the Congress, there were still fixed commission rates. The Section was inserted because the Congress was persuaded by many in the broker-dealer community they might “throw the baby out with the bath water” if research dried up when commissions became competitive.

Soft dollars had become ubiquitous because the fixed commission rates were extremely high, and broker-dealers would promise to give their large customers almost any service or favor to provide a *de facto* discount, although not permitted under NYSE rules.

They knew that when commissions were unfixed there would be a reduction in commissions, but were unsure how much they would decline. The prospect of charging just for execution services was too frightening to bear, and the quest for exceptions was made a first priority by many broker-dealers.

The lobbying and testimony were effective, and Section 28e found its way into the legislation.

Since enactment, the Commission has more than once reinterpreted these exceptions to the forbidden use of soft dollars, and is attempting to do so again through this Release. However, assuming the Interpretation remains as written, I predict that within two years or so it will be reinterpreted once more, and so forth *ad nauseam*.

Soft dollars are not needed. With commissions fully negotiable, charging unnecessary extra commissions to cover different services that are paid for by the fund’s investors, rather than by the fund managers, requires complicated accounting and management systems, in addition to extra (and what should be unnecessary) regulatory costs by the Commission and self-regulators, and results in reduced returns for investors.

If directed orders are sent to broker-dealers in exchange for soft dollars for entry into the national market system under the new Regulation NMS, it entirely possible that “best execution” may not be attained. The mutual fund or other soft dollar payer may be

contractually required to send some orders to broker-dealers that may well not be the fund manager's preferred or best choice.

The very recent decision by Fidelity to dispense with soft dollars in their dealings with Lehman are but the first harbinger of what should become a flood of similar decisions by other fund managers.

I realize the very difficult political problems with seeking the repeal of 28e, but the Commission was created with the intent that its decisions should always be made in the best interest of investors and issuers, and not in the best interests of intermediaries at the expense of investors and issuers.

The lobbying against a repeal of 28e would be intense, but I cannot believe that any representative, senator or the president would vote that making decisions in favor of intermediaries over investors would fly very well when reelection time occurred.

Very truly yours,

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