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S7-09-05 - 66

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

December 28, 2005

Re: Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934. Release No. 34-52635; File Number S7-09-05.

Dear Sir:

I appreciate the opportunity to comment on the Commission's proposal to clarify section 28(e) of the Securities Exchange Act of 1934 relating to the payment of soft-dollars by broker-dealers to advisers. The current soft-dollar arrangements have created an inefficient barter market and a bundling of two essentially unrelated services of research and brokerage services. Both results are inefficient and costly. I support the movement to separate the two services and ask the Commission to encourage separate payment for these services in cash.

1. **Soft dollar arrangements are barter markets. Barter markets are inefficient and more costly than exchanges through a money medium.** Therefore, I suggest that the Commission encourage advisers to purchase research with hard dollars and place brokerage business with hard dollars. I believe that the unbundling of research and brokerage will (1) eliminate many if not all of the conflicts of interest that have plagued the profession of fund advisers; (2) close the door to many opportunities of hiding prohibited relationships at the expense of the fund shareholders; and (3) help restore the culture of self-limitation that used to be the hall mark of the profession.

Barter markets invite imprecise valuations as compared to a market that is currency based. Currency markets lend themselves to more quantifiable and precise comparisons of goods and services. Hence, they allow for greater healthy competition.

2. **Bundling services have an effect that is similar to that of a barter market.** When research is paid by allocated brokerage business the price of both the research and the brokerage business or only one of them can be inflated, and the inflation is hard to detect and to allocate. The true price of either or both services can be higher than had they been separately measured by money, and neither can be compared to other similar or even identical services. Value may shift from one service to the other. The fund shareholders who bear the cost have little or no chance of knowing how much they are

paying and for what. Unbundling the services and having a separate money payment for each service renders the adviser far more accountable. It also allows for a better and less expensive service and provides a greater degree of competition among these service providers.

3. The Commission should encourage cash payments for each service and remove any doubts that may arise from this separation and cash payment. I understand that on December 22, 2005, Fidelity Investments wrote a comment letter to the Commission. In that letter Fidelity stated that it has begun negotiations with some of its major brokers to separate the purchase of research from brokerage services, and that is has determined to pay for research separately out of its own resources, leading to lower brokerage commissions paid by its funds.

It seems that some brokers are concerned that notwithstanding the separate payment for research and brokerage services, the Commission might ignore the separate individual entity that pays for and obtains the research (Fidelity, as the funds' adviser) and the entities to whom brokerage services are provided (the Fidelity funds). The concern is that if the individual entities are ignored (and the Fidelity funds are deemed to be the advisory clients of firms selling research to Fidelity), then section 206(3) of the Advisers Act of 1940 will apply to any principal trades between those firms and the Fidelity funds.

I join in FMC's request for the Commission to make it clear that the Commission supports efforts of those in the brokerage and mutual fund industries who seek to separate the purchase of research from brokerage. The Commission will advance this public policy by clarifying that the restrictions of Section 206(3) do not apply when an advisor uses its own resources, and not the assets of the funds it manages, to purchase research from firms that are dually-registered as broker-dealers and investment advisers.

I strongly believe that with the Commission's encouragement, Fidelity's approach will lead to resolving and eliminating many of the serious conflict of interest and high costs which arise from the bundling research provision and brokerage services.

Sincerely,

Tamar Frankel

Tamar Frankel
Professor of Law