

September 7, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Commission Guidance Regarding Client Commission
Practices Under Section 28(e) of the Securities Exchange Act of
1934 (File No. S7-13-06)

Dear Ms. Morris:

The Investment Company Institute¹ commends the Commission for issuing its final interpretive guidance on the use of soft dollars under Section 28(e) of the Securities Exchange Act of 1934.² The final guidance properly reflects comments received on the proposal, including those provided by the Institute,³ and strikes an appropriate balance between the regulation of soft dollar practices and the facilitation of soft dollar arrangements in the interests of investors.

Commission-Sharing Arrangements

The Release requests further comment with respect to commission-sharing arrangements under Section 28(e). The Institute strongly supports the flexibility provided by the Commission in the final guidance to allow market participants to structure arrangements that are consistent with the statute. We are particularly pleased that the Commission recognized the variety of commission-sharing arrangements under Section 28(e) and recommend that any further guidance reflect the need for

¹ The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is available at the end of this letter.

² SEC Release No. 34-54165 (July 18, 2006), 71 FR 41978 (July 24, 2006) ("Release").

³ See Letter from Paul Schott Stevens, President, Investment Company Institute, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated November 25, 2005.

flexibility in this area. We also commend the Commission for clarifying that the final guidance does not place any affirmative obligations on money managers with respect to the responsibility of introducing brokers involved in commission-sharing arrangements. We urge the Commission to continue to work with the broker-dealer community to ensure that any responsibilities imposed on brokers under the guidance with respect to these types of arrangements are appropriate and workable.

Level Playing Field for All Investment Advisers

While the interpretive guidance helps ensure a strong regulatory framework for soft dollar practices of investment advisers and accounts subject to Section 28(e), we continue to believe that the Commission should prohibit the use of client commissions outside the safe harbor by *all* investment advisers, regardless of the type of client account involved. As we noted in our comment letter on the proposed interpretive guidance, advisers to investment companies and advisers to pension funds under ERISA may be prohibited from using commissions outside the safe harbor, whereas advisers to other types of accounts are free to do so (registered advisers must provide appropriate disclosure in Form ADV).⁴ This regulatory disparity, especially when combined with other forces exerting downward pressure on overall commissions, may create strong incentives for broker-dealers to favor hedge fund and other advisers who have greater freedom to use soft dollars to make payments outside of the Section 28(e) safe harbor.⁵

We urge the Commission to adopt a rule under Section 206(4) of the Investment Advisers Act that will prohibit an investment adviser from using client commissions to pay for any products or services that fall outside the safe harbor. The Commission also should pursue the recommendation of the NASD Mutual Fund Task Force that the SEC urge the Department of Labor (with respect to non-ERISA retirement accounts) and the federal banking agencies to require all discretionary investment advisers not subject to the SEC's jurisdiction to comply with the standards of the safe harbor. This approach will ensure that all advisers treat investors equitably in connection with the adviser's use of brokerage, and that broker-dealers do not have an incentive to favor advisers who are permitted to use client commissions outside the safe harbor.

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⁴ Banks must either comply with the safe harbor or disclose their soft dollar policies and practices to fiduciary clients and obtain consent.

⁵ For example, broker-dealers sometimes provide important benefits by performing "functions incidental" to effecting securities transactions, such as providing access to initial public offerings, access to corporate management, and committing the broker-dealer's capital to complete client trades. These valuable benefits, while within the safe harbor, may tend to bypass mutual funds and ERISA retirement plans in favor of hedge funds and other accounts whose commission payments, due to a regulatory anomaly, can be more lucrative to the broker-dealer. Without a level playing field, all advisory clients will not be afforded the same protections relating to the adviser's use of brokerage and funds will be placed at a regulatory and competitive disadvantage to other types of client accounts.

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If you have any questions concerning these comments, or would like additional information, please contact the undersigned by at (202) 326-5815.

Sincerely,

/s/

Elizabeth Krentzman
General Counsel

cc: The Honorable Christopher Cox
The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Annette L. Nazareth
The Honorable Kathleen L. Casey

Erik R. Sirri, Director
Robert L.D. Colby, Deputy Director
Division of Market Regulation

Andrew J. Donohue, Director
Division of Investment Management

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About the Investment Company Institute

The Investment Company Institute's membership includes 8,791 open-end investment companies (mutual funds), 652 closed-end investment companies, 195 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$9.273 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 89.5 million shareholders in more than 52.6 million households. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 171 associate members, which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers is managed by these Institute members and associate members.