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November 25, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Re: S7-09-05; Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934 ("Proposed Guidance")

Dear Mr. Katz:

T. Rowe Price[1] is submitting this letter to provide our views regarding the Proposed Guidance. We commend the Commission for providing the Proposed Guidance and, in particular, for allowing industry participants and other interested parties to comment prior to finalizing such guidance.

T. Rowe Price fully supports the goals of best execution and accountability of investment managers to their clients. T. Rowe Price has been an active participant in the debate regarding the appropriate use of commission dollars both in the U.S. as well as abroad.

As part of its fiduciary duty, T. Rowe Price maintains a robust process for the review of its brokerage allocation decisions. Under T. Rowe Price's current policy, we have discontinued the use of brokerage commissions to acquire independent, third-party non-broker-dealer research and related services. Although independent third-party research remains an important component of our investment approach, such research is currently being paid for directly by T. Rowe Price, rather than through third-party soft dollar arrangements. However, research and services continue to be acquired or received either directly from executing broker-dealers or indirectly through other broker-dealers in step-out or other transactions, subject to best execution obligations.

[1] T. Rowe Price Associates, Inc., a wholly-owned subsidiary of T. Rowe Price Group, Inc., together with its advisory affiliates (collectively referred to as "**T. Rowe Price**"), had over $257 billion of assets under management as of September 30, 2005. T. Rowe Price has a diverse, global client base, including institutional separate accounts, T. Rowe Price sponsored and sub-advised mutual funds, and high net worth individuals.

As noted above, T. Rowe Price believes the time has come to implement changes to current regulation and interpretation relating to the use of client brokerage. In order to ensure that commissions are used appropriately, and that clients understand how their advisers use commissions, we believe that two actions must be taken:

> **First,** the definition of permissible research services must be more clearly and narrowly defined and interpreted; and
>
> **Second,** the disclosure of an investment manager's portfolio execution philosophy, practices and procedures must be expanded.

The Proposed Guidance addresses this first component, and the Commission has stated that it will address the second component, through proposed rulemaking, in the near future.

As the Commission considers these issues, we believe it is important to note that, in our opinion, compelling evidence has not been offered that would justify a wholesale change to the current brokerage paradigm. We believe that both third party and proprietary research services provide real value to the investment process and that the provision of such services are legitimate considerations for an investment manager in fulfilling its fiduciary duty. Accordingly, we strongly oppose any action that would result in the elimination of soft dollar usage for third party research or the unbundling of proprietary research.

T. Rowe Price supports the letters of the Investment Company Institute ("**ICI**") and the Investment Association of America ("**IAA**"). In addition to the comments above, and the comments of the ICI and IAA, we offer the following specific comments:

Definition of Research.

The history of Section 28(e) has been well documented. One aspect of this history - the Commission's interpretation of the permissible products and services that may be obtained through commissions relating to transactions in client accounts - is especially relevant today. Back in 1976, the Commission was concerned over the increased use of commission dollars to obtain products and services that it believed were "readily and customarily available and offered to the general public on a commercial basis." [2] The Commission, therefore, interpreted Section 28(e) to exclude such products and services. That standard remained in place until 1986, when the Commission came to the conclusion that the 1976 standard was difficult to apply and overly restrictive in certain circumstances.[3] In the 1986 Release, the Commission adopted a new

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[2] *Interpretations of Section 28(e) of the Securities Exchange Act of 1934; Use of Commission Payments by Fiduciaries,* Exchange Act Release No. 12251 (March 24, 1976) ("**1976 Release**").

[3] *Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters,* Exchange Act Release No. 23170 (April 23, 1986) ("**1986 Release**").

interpretation, still in place today, that focuses on "whether the product or service provides lawful and appropriate assistance to the money manager's investment decision making process."[4]

We generally support the definition of permissible research services in the Proposed Guidance. The Commission's Proposed Guidance is needed to provide the industry with more clarity as to the permissible uses of client brokerage. We believe the Proposed Guidance will help ensure that client brokerage is used solely to obtain those products and services that are consistent with the federal securities laws. This approach should also help eliminate any remaining vestige of questionable activity whereby expenses, better categorized as overhead, are paid for with client brokerage.[5] We believe, however, that the Proposed Guidance should be enhanced by confirming that discussions with analysts, as well as the arranging of meetings or access to company executives or others that can provide substantive information, consistent with 28(e) and the Proposed Guidance, fall within the definition of permissible research.

We support the Commission's decision to apply the interpretation of research equally to proprietary and third party providers. Historically, broker-dealers have provided products and services in addition to the execution and processing of transactions, including research ideas and opinion. It may be less evident that such brokers also provide research ideas and opinions from unaffiliated parties through arrangements whereby the broker contracts to pay the third parties to make their research available to the broker's customers. However, in these cases, the brokers are similarly competing to attract order flow by arranging to provide useful and diverse products and services.

The Proposed Guidance adds two elements of permissible research services that we feel are better excluded from such definition. While stock quote and pricing systems, as well as publications, provide valuable information to investment advisers, we believe such services are more akin to overhead than permissible services. We recognize that publications are a grey area, but we believe it is inappropriate that, for example, the *Wall Street Journal* or similar publication be paid for with commission dollars. Regardless of whether such publications can aid in the investment process, materials of general public distribution (e.g., those available on the news stand), should be paid for directly by the adviser. On the other hand, publications or subscriptions tailored and marketed to the institutional investment community for the purpose of providing information or opinion helpful to an adviser's investment decision- making process could be included within the definition of permissible research. To avoid the difficult task of dividing publications into permissible and impermissible categories, the Commission may wish to place the burden on advisers to make reasoned judgements, and disclose their practices to their clients. This disclosure will allow clients, and the Commission itself, to evaluate such judgments. We respect that approach.[6]

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[4] Id.

[5] See *Inspection Report of the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds,* (September 22, 1998) ("**1998 Sweep**").

[6] We believe that whatever final approach is used to determine the eligibility of publications should also apply to conferences.

Definition of Brokerage Services.
We generally support the Commission's Proposed Guidance relating to the definition of Brokerage Services. The "temporal standard" has been the subject of much debate. However, we believe that as long as the concept of "mixed use" can be applied to firms' order management systems, then the definition is workable. There are portions of such systems that could be considered as brokerage services (e.g., communications links with broker-dealers) and research services (e.g., certain trade analytics).

Mixed Use Considerations.
We support the Commission's affirmation of the concept of "mixed use". However, as the Commission itself noted, the requirement is to make a "reasonable allocation." Although documentation is important, the Commission should recognize that generally allocations are not an exact science and, therefore, the documentation often will not be exact.

We also have a serious concern regarding the Commission's statement in footnote 108:

> "if the money manager seeks the protection of the safe harbour and receives both Section 28(e) eligible and ineligible products and services for a bundled commission rate, the manager must use his own funds to pay for the allocable portion of the cost of products and services that are not within the safe harbour."[7]

We believe this position is problematic for two reasons. First, the issue of unbundling is extremely significant and complex and should not be addressed by a footnote reference. Other regulators have spent years on the issue and have sought public comment many times over. If the Commission wants to explore whether unbundling, in any form, would be appropriate for the U.S. markets, we believe a "concept release" or, at the very least, a "proposing release" dedicated to the topic be issued. In fact, we had anticipated that the Commission's next phase, regarding the reporting of client commission practices, would contain a detailed discussion and request for comment on the unbundling issue. [8]

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[7] Securities Exchange Act Rel. No. 34-52635 (October 19, 2005) ("Proposed Guidance").

[8] For the record, we would strongly oppose the requirement that advisers be required to unbundle bundled brokerage. Although the idea is attractive in the abstract, adopting such a requirement would require major changes to the brokerage paradigm. We are aware, through press reports, of the Fidelity/Lehman arrangement. The specifics of the arrangement are not yet clear and neither is the effect of such arrangement on either entity or the industry. We are also aware of the FSA's new rules regarding the unbundling and reporting of bundled brokerage. We believe the FSA's approach, while well intentioned, will result in a lack of uniformity thereby providing expense and risk to advisers with little benefit to clients. We urge the Commission to take a "wait and see" approach to unbundling and resist applying an "FSA like" rule. We believe that the Fidelity/Lehman announcement, if nothing else, shows that the industry may find a solution on its own. A true industry solution, with thoughtful Commission guidance, is less likely to result in unintended consequences. We look forward to the SEC's next proposal to discuss effective approaches to the disclosure of client commission practices.

Second, we believe the Commission's statement fails to recognize that advisers can receive incidental services that are not considered in its determination as to whether the commissions paid are reasonable in relation to the services received. Due to the way broker-dealers and other firms today offer and deliver information to their clients, we believe it is inevitable that advisers will have access to and obtain, on an incidental basis, information and material from such entities with whom they transact client orders. The problem arises when all or a portion of such material is not permitted to be obtained with client commission dollars. An example could be where a firm has access to a protected website in order to collect daily research reports but that site also includes other information that does not satisfy the definitions of execution or research under the Proposed Guidance. Further, a broker-dealer may send its clients copies of articles or other newsletters that would not satisfy the elements of research under the Proposed Guidance. However, if an adviser is not taking such incidental "services" into consideration when making its evaluation of the value of the broker's services in relation to the commissions paid, then it would not be in violation. We recognize that advisers need to be mindful that taking this approach too far could result in the violation of their fiduciary duties, Section 28(e), and statutory or regulatory requirements.

Commission Sharing.

The Commission is well aware of today's commission sharing activities, including the permissible use of step-outs, introducing brokers, and correspondent relationships. However, the section on commission sharing in the Proposed Guidance has created a number of concerns regarding the viability of such practices in the future.

Section 28(e) has language that contemplates the broker-dealer providing the research also be involved in "effecting" trades. It is this requirement that has contributed, at least in part, to the various arrangements between the brokers that actually perform the execution, and the others that provide research as well as certain functions to help "effect" the trade. These arrangements have been more confusing and less transparent to non-industry participants, than if brokers were permitted to engage in pure commission sharing (e.g., where one broker is responsible for the trading functions and another is responsible for the provision of research or other permissible services). We encourage the Commission to evaluate whether there is any flexibility in its authority to interpret Section 28(e) to permit such arrangements.[9] The non-execution component would still have to be consistent with the definition of permissible services, which would protect against a resurfacing of the illegal "give ups" of the past or other similar arrangements.

If the Commission believes it is not possible or appropriate to make such an interpretation, we believe there is a statement in the Proposed Guidance that needs clarification. It reads as follows:

> "...each party to the arrangement must determine if it is contributing to a violation of law, including whether the involvement of multiple parties to the trade is necessary to

[9] We note that the Commission interprets the "provided by" requirement as permitting advisers to be involved in the selection and negotiation of third party research as long as the broker-dealer is billed by the third party and is responsible for the payment of such services. We do, however, recognize the legislative history and past pronouncements on the issue of "effecting trades" are long standing and complex.

effecting the trade, beneficial to the client, and appropriate in light of all applicable duties."[10]

It would be difficult in many circumstances to claim a step out, for example, or other commission sharing arrangement, is technically "necessary to effecting the trade." This standard appears to be a hold over from the days of "give ups". We submit that as long as a commission sharing arrangement is consistent with an adviser's fiduciary duty and best execution principles, then it should be permitted. We are concerned that a literal reading of the Commission's statement will effectively eliminate most, if not all, of the commission sharing arrangements properly being engaged in today. We do not believe the Commission intends such a result and we request clarification on this point.

Further, we believe the Commission should clarify which parties are responsible for determining whether an introducing broker satisfies the obligations of "effecting securities transactions." The four minimum requirements noted in the Proposed Guidance[11] are not elements that are easily monitored by advisers. We believe the broker-dealers involved in setting up these relationships should be responsible to ensure the elements are met, and not the investment adviser. If the Commission disagrees, then we request that the Proposed Guidance clarify that the adviser can comply with any such determinations by relying on the certifications of the broker-dealer.

Effective Date.

A determination as to the appropriate effective date is difficult to make in light of the open issues regarding the Proposed Guidance. If elements of unbundling and/or commission sharing reviews and certifications are contained in the final guidance, we suggest a six to nine month implementation process. If not, we believe a three to six month period may be sufficient time for advisers to evaluate their services and amend all necessary agreements in light of the new guidance.

Conclusion.

We support the Commission's decision to issue guidance regarding the permissible uses of client commissions. In this regard, we generally support the Proposed Guidance, and believe it will provide clarity to advisers and comfort to investors that commission dollars are being used for appropriate and legitimate purposes. We believe this approach is far more effective than making significant changes to a trading structure that has been well supported by the pillars of best execution, fiduciary duty and regulatory oversight.[12]

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[10] Proposed Guidance at p. 45.

[11] See id. at p. 46.

[12] If investment managers are inappropriately selecting broker-dealers to further their own interests, we are confident the Commission will investigate such investment managers. For example, we believe that a heightened level of scrutiny should be applied to advisers that trade extensively or exclusively with their broker-dealer affiliates.

Finally, we are confident that the SEC will continue to take a leadership role in this area. Although seeking global consistency is an important goal, it should not take precedence over what is most appropriate for our market place. [13]

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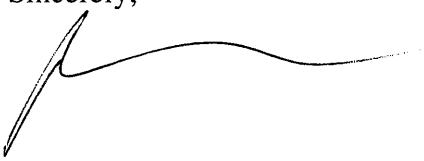
T. Rowe Price appreciates the opportunity to express our thoughts regarding these important issues. We fully support the goal of enhancing the alignment of interests between investment managers and their clients. Consistent with that goal, we believe a more narrow and precise interpretation of appropriate commission practices will prove to be an effective tool in furthering investor protection and client confidence. We look forward to the continued dialogue surrounding these issues.

Sincerely,



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[13] See fn. 8 regarding T. Rowe Price's concerns over unbundling.