Bill George
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July 27, 2010

Elizabeth Murphy, Secretary
Securities and Exchange Commission
100 F Street - NE
Washington, DC 20549-1090

Subject: File Number S7-15-10

Dear Ms. Murphy, Chairperson Shapiro and Commissioners:

12b1 fees provide incentives to mutual fund sales people which may not be aligned with the best financial interests of their clients. The fact that 12b1 fee sharing arrangements are disclosed does provide warning to investors, however, in my experience, I've found that many 'retail' mutual fund investors listen to their security salesman's dismissive and benign explanation of 12b1 fees, and rarely read the detailed explanation contained prospectus and quarterly reports. And, most mutual fund investors fail to understand the potential conflicts-of-interest introduced by 12b1 fees. Further, I believe that 12b1 fees complicate the understanding of the costs of investing in some mutual funds, obscure the costs of investment performance, and 12b1 fees complicate the client's calculation of fair compensation for the services rendered by their securities salesperson and securities dealer. <u>Mutual fund fee sharing in 12b1 arrangements should be brought to an end</u>.

I would also like to take this opportunity to make a general comment relating to the SEC's overall philosophy on disclosure and transparency.

I have always believed that there is a mandated level of disclosure for 12b1 fees - and for mutual fund management fees as well. This mandated level of disclosure *can* provide insight, and it *can* allow somewhat sophisticated investors to ask questions and research the important issues relating to these costs. With additional effort these investors can come to reasonable conclusions about how these costs are impacting their net investment performance. So, I've felt that the disclosure requirements for these fees can lead to a sufficient level of transparency . . . with some effort on the part of the mutual fund investor.

However, I find the SEC's philosophy on the disclosure of bundled undisclosed soft dollar brokerage commission arrangements [under Section 28(e) of the '34 Act] inconsistent with the SEC's apparent general disclosure philosophy for 12b1 fees and mutual fund management fees.

During the July 12, 2006 SEC "Sunshine Meeting"[1] at which the most recent Interpretive Guidance on Section 28(e) received a unanimous passing vote by the SEC

[1] See, SEC's July 12, 2006 Sunshine Meeting at>
http://www.connectlive.com/events/secopenmeetings/2006index.html

there was an agreement that issuance of a 'second wing' of interpretive guidance on disclosure and transparency of soft dollar arrangements would be a high priority. I have been very disappointed that this 'second wing' of interpretive guidance has never been undertaken.[2]

Early in this decade, it seemed the SEC was beginning to understand the magnitude of the conflicts-of-interest which can be introduced and motivated by full-service brokers' bundled undisclosed soft dollar brokerage commission arrangements. It seemed the regulatory attention focused on the late trading scandals[3], the directed brokerage for mutual fund shelf-space deals[4], the trading commissions for initial public offering allocation - and for IPO 'flipping' consideration[5], and the lavish entertainment for special trading favors[6] seemed to gain sufficient attention to motivate regulators to peel back the layers of the onion and look to motivation. The above mentioned abuses seemed to have captured a high level of attention from regulators, but it seems that level of attention was fleeting.

Early in this decade it seemed regulators were beginning to realize that the "paid-up" soft dollar portion in the undisclosed bundled brokerage commission arrangements of full-service brokerage firms were, sometimes, not being used (by advisors and full-service brokers) for the purposes outlined in Section 28(e) of the Securities Exchange Act of 1934.

I believe many of these (long practiced) abusive soft dollar practices would have been discontinued or significantly reduced if the SEC had taken an even handed approach to studying soft dollar abuses, when (in the mid 1990's) the SEC conducted the 'Inspection Sweeps' which led to the **Inspection Report on the Soft Dollar Practices of Broker Dealers, Investment Advisors, and Mutual Funds** (published, September 22, 1998). But, the methodology of "the sweeps" was flawed. For some reason the SEC made a conscious decision to focus its 'inspection sweeps' on institutional agency (third-party) brokers even though third-party brokers have little opportunity to cross-sell services which fall outside the safe harbor of Section 28(e)

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[2] See Comment Letter to SEC dated September 5, 2008 at http://www.scribd.com/doc/5578021/SEC-Proposed-Guidance-S72208-Comment-C

[3] See Late Trading Scandals at: http://en.wikipedia.org/wiki/2003_mutual_fund_scandal

[4] See, **Directed Brokerage, Conflicts of Interest and Transaction Cost Economics** *by* D. Bruce Johnsen Professor of Law, George Mason University School of Law March 2008 at: http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=d_bruce_johnsen
and **American Funds Battle Heats Up** *by* Tom Petruno & Josh Friedman at: http://articles.latimes.com/2005/mar/25/business/fi-american25

[5] Initial Public Offering (IPO) Flipping see: http://www.sec.gov/news/headlines/csfbipo.htm

[6] See lavish entertainment exchanged for brokerage favors and order flow, at: http://blogs.wsj.com/law/2008/03/06/fidelity-trading-order-flow-for-tickets-cigars-dwarf-tossing/

The flawed methodology was used even though it has always been obvious that full-service brokerage firms have far greater opportunity to trade services and favors,* with institutional advisors, in exchange for bundled undisclosed soft dollar commission premiums.[7]

Under the SEC's expressed goal of investor protection, it would seem that forcing the disclosure and transparency of full-service brokers' bundled undisclosed institutional soft dollar brokerage commission arrangements should be a much higher regulatory priority, than reworking disclosure requirements that are already in place for 12b1 fees and / or for mutual fund management fees.

Thank you for this opportunity to comment.

Sincerely,

Bill George

* Services and favors which might not qualify for the 'safe harbor' of Section 28(e).

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[7] From the **Inspection Report on the Soft Dollar Practices of Broker Dealers, Investment Advisors, and Mutual Funds:**

> We commenced the sweep with examinations of 75 broker-dealers believed to be actively involved in third-party soft dollar arrangements. At each broker-dealer, we reviewed the products and services provided to advisers or purchased on their behalf, the types of transactions used to generate soft dollar credits, and procedures employed to monitor soft dollar arrangements. We also studied commission rates, conversion ratios and the criteria used by broker-dealers to ascertain if a product could qualify for protection under the safe harbor.
>
> During broker-dealer inspections, we identified investment advisers that may have received products or services that appeared to be outside of the safe harbor. Each broker-dealer was asked to provide a list of registered investment advisers with which they had third-party soft dollar arrangements, including detailed information on total commissions paid to the broker-dealer, total dollars spent for each adviser's soft dollar arrangements, products and services provided to each adviser, soft dollar ratios for each arrangement, and the commercial value of each product or service provided to advisers. We then used commission reports, trade blotters, canceled checks and invoices to test the accuracy of each list.
> See: section **III. Examination Sweep: Objectives Methodology and Universe** at: http://www.sec.gov/news/studies/softdolr.htm#sweep