

May 18, 2011

Elizabeth M. Murphy, Secretary  
U.S. Securities and Exchange Commission | submitted electronically to: rule-comments@sec.gov  
100 F Street  
Washington, DC 20549

**Subject: Request for rule mandating (universal) institutional brokerage commission disclosure and transparency (Reference Interpretive Release S7-09-5).**

Dear Ms. Murphy, Commissioners and Chairman Schapiro:

Shortly after the implementation of the U.S. Justice Department's mandate for fully-negotiated brokerage commissions (May 1, 1975) The U.S. Congress passed an amendment to The Securities Exchange Act of 1934. This amendment was titled Section 28(e). Section 28(e) created a "safe harbor" for institutional investment advisors to "pay-up" from their fully-negotiated costs of trade execution, and with the amount "paid-up" (above the fully-negotiated costs of transaction execution) purchase qualifying research. Section 28(e) mentions that this use of institutional clients' commissions, by fiduciaries, is subject to the fiduciary's good faith judgment that the value of commissions paid is reasonable in relation to the value of research and brokerage services provided.

Section 28(e) has been misinterpreted and improperly enforced by the U.S. Securities Exchange Commission (SEC). Institutional advisors and *full-service brokerage firms*<sup>1</sup> have been unwilling to provide accurate accounting (disclosure and transparency) relating to the research and services exchanged for the commissions "paid up" in their institutional brokerage commission arrangements.

As it relates to Section 28(e), the SEC has always had a disproportionate focus of its enforcement efforts on *institutional agency brokerage firms* which facilitate institutional investment advisors' acquisition of independently produced institutional investment research. These *institutional agency brokerage firms* are easy regulatory targets, because the nature of their activities requires the documentation and accounting of the brokerage commissions generated and an accounting of the cost of third-party institutional research services provided to the brokers' institutional investment advisor clients.

During the July 12, 2006 SEC "Sunshine Meeting" several SEC Commissioners mentioned the desirability of, and intention to, implement rules on *universal* institutional brokerage commission disclosure and transparency. However, it seems nothing material was done to further that intention.<sup>2</sup> The apparent unwillingness, or inability, of the SEC to act on *universal* institutional

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<sup>1</sup> Full-service brokerage firms typically engage in principal trading, market making and investment banking activities.

<sup>2</sup> See, webcast of the July 12, 2006 Sunshine Meeting - vote on Commission Guidance Regarding Client Commission Practices Under Section 28(e) of The Securities Exchange Act of 1934. <http://www.connectlive.com/events/secopenmeetings/2006index.htm>

brokerage commission disclosure and transparency may have been the force that motivated (past) Chairman of the SEC, Christopher Cox to send letters on May 17, 2007 to Senator Christopher Dodd and Congressman Barney Frank urging The U.S. Congress “to repeal or substantially revise Section 28(e) of the Securities Exchange Act of 1934”.<sup>3</sup> I believe Chairman Cox’ letter outlines some of the important reasons that full-service brokerage firms’ institutional brokerage commission arrangements should be mandated to be transparent and fully-disclosed.

Thank you for your consideration of this request for rulemaking.

Respectfully,

William T. George

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<sup>3</sup> See, letter dated May 17, 2007 from (then) Chairman of the SEC, Christopher Cox, addressed to Senator Christopher Dodd requesting that The U.S. Congress “repeal or substantially revise Section 28(e) of the Securities Exchange Act of 1934” > <http://www.scribd.com/doc/13752510/Cox-Requests-Legislative-Action>