



**Securities Industry Association**

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Association for Investment Management & Research  
Professional Standards & Advocacy Department  
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P.O. Box 3668  
Charlottesville, VA 22903

January 31, 2002

Re: Proposed Trade Management Guidelines

Ladies and Gentlemen:

The Securities Industry Association<sup>1</sup> ("SIA") is taking this opportunity to respond to the invitation to comment on the Proposed Trade Management Guidelines which the Association for Investment Management and Research ("AIMR") published on November 12, 2001.

At the outset, we note that a significant number of our members, many of whom employ AIMR members, have expressed concerns regarding various aspects of the proposed guidelines, including; but not limited to the following:

- The suggestion that trade execution quality can be quantified or measured.
- The appropriateness of tying trade management guidelines in any way to AIMR's Soft Dollar standards.
- Burdensome implementation, monitoring and recordkeeping costs that would ultimately be borne by investors.
- The inaccuracy of various definitional terms and descriptions of potential conflicts of interests.
- Some confusion between the duties and obligations of broker-dealers and investment advisers.

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<sup>1</sup> The Securities Industry Association brings together the shared interest of nearly 700 securities firms to accomplish common goals. SIA member firm (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift, and pension plans, and generates \$358 billion of revenue. Securities firms employ approximately 760,000 individuals in the United States. (More information about SIA is available on its home page:<http://www.sia.com>.)

- Particular burdens on smaller investment managers and the broker-dealers who provide execution services to them.

We expect that a number of members will be filing comment letters addressing the above concerns in more detail, and SIA is therefore limiting its comments to a general discussion of whether there is any need for such guidelines at this time, and the appropriateness or practicality of endeavoring to “quantify” best execution.

## **DISCUSSION**

### Need for Guidelines

We believe that in light of significant pending or recently implemented regulatory initiatives described below, the AIMR guidelines are premature, and in all likelihood unnecessary. Furthermore, to the extent that the guidelines differ from, or are potentially inconsistent with, the applicable regulatory framework, they might cause substantial confusion and expense for market participants with little incremental value for investors.

The Securities and Exchange Commission (“SEC”) has adopted two new rules under the Securities Exchange Act of 1934-- Rule 11Ac1-5 and Rule 11c1-6 that require market centers and broker-dealers to make information publicly available regarding their order execution and routing practices. The added visibility regarding order execution quality and routing practices mandated by these rules is intended to:

- greatly increase the opportunity for public investors to evaluate what happened to their orders; and
- encourage competition among market centers and broker-dealers to provide the best possible execution for investor orders.

The rules had various phase-in periods that, in some cases, were extended due to the September 11<sup>th</sup>, 2001 terrorist attacks and resultant disruption to firms’ operations, or to unforeseen compliance difficulties recognized by the SEC. Implementation of the rules, as they now stand, has been a lengthy process, requiring considerable effort and expense on the part of firms’ compliance and technical departments, the national securities exchanges, Nasdaq and vendors. Industry regulators and other interested parties have just started to analyze the statistics being produced to determine whether they are meeting their goals. We believe that the minimal experience with the rules and the implementation burdens experienced by firms are sufficient reasons alone for AIMR to refrain from recommending its own Trade Management Guidelines.

We also understand that the SEC is developing its own interpretive guidance on “best execution” and similar concepts. In light of this, the adoption of AIMR Trade Management Guidelines may be superfluous or contradict items in the SEC’s release; at a

minimum, adoption of any guidelines should be postponed until the SEC's guidance is issued.

Finally, we would note that the Investment Advisers Act of 1940 already requires extensive investment manager disclosures on Form ADV and other documents, regarding matters such as fees and compensation, brokerage practices and potential conflicts of interest. Under other pending proposals,<sup>2</sup> even more comprehensive disclosure requirements would be implemented. While there is broad support for certain of the additional proposed disclosures, several comment letters have raised concerns that some of the disclosures would not only be burdensome, but would likely confuse rather than assist investors. We believe that a number of these concerns have merit and may be contributing to the fact that the SEC has still not finalized certain proposed disclosure requirements, nearly two years after they were proposed.

Given the deliberative manner in which the SEC is considering these disclosure requirements, we think it would be particularly inopportune for AIMR to recommend new and additional disclosure requirements, particularly those that differ from the current regulatory regimen, until final action has been taken by the SEC. Indeed, regardless of the SEC's final action, any disclosure recommendations should by and large emphasize compliance with SEC requirements, rather than imposing additional requirements.

#### Implementation of Trade Measurement Process

While trade measurement processes may have utility in certain contexts, such as for evaluating the effectiveness of order flow arrangements or determining the efficiency of various market centers, we believe that in many cases such processes have little utility as a tool for selecting brokers to execute transactions for managed accounts. In that regard, we note that of the more than thirty characteristics cited in Section 1.B.1 of the AIMR guidelines as potential bases for broker selection, virtually all are qualitative, rather than quantitative in nature. Introducing trade measurement criteria into a process that is so overwhelming qualitative would, we believe, distort the overall investment process.

Further, it should be pointed out that, there is a substantial skepticism in the investment management industry as to the accuracy or utility of many trade measurement services or processes. The value of such services or processes being in doubt, we do not believe that they should be included in any best practices guidelines. In any event, in a great many cases, other factors would have a far more profound impact on account performance.

Moreover, for many advisers, a trade measurement process would likely not be useful and would be excessively costly and burdensome. As such, it is not a "best

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<sup>2</sup>See SEC Release IA-1862 (FileNo. S7-10-00)

practice” in the industry, but rather one of many possible factors or methods an adviser may consider employing in the overall trading process.

## **CONCLUSION**

While several items in the proposed guidelines might be useful in some cases-- such as articulating general characteristics for broker selection, we do not believe that the overall trade management guidelines proposed by AIMR are either needed or would provide substantial benefits in relation to their cost and burdens. In any case, we would urge that AIMR not proceed until various regulatory initiatives have been finalized, and there is demonstrable evidence of abuse in broker selection, which evidence we would respectfully suggest is currently lacking.

If you have any questions regarding the matters set forth in this letter, please contact Michael Udoff of SIA staff at (212) 618-0509.

Very truly yours,

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Senior Vice President  
and General Counsel

cc: Maria Clark - AIMR  
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