



This past June, SEC Director of the Division of Investment Management, Andrew "Buddy" Donahue, confirmed to CAPIS representatives that the July 2008 guidance to mutual fund boards of directors* should soon be released as final guidance. However, recent news reports of President Obama's plans for new rules regarding mutual fund disclosures has some questioning if the final guidance will indeed be published. And if released, what changes, if any, will be made. Below, Kelly C. Abernathy, CAPIS's General Counsel and Chief Compliance Officer, provides her insights into how the proposed guidance may impact CAPIS clients.

Quick Links

[CAPIS in the News](#) 

[About Us](#) 

[CAPIS Website](#) 

CAPIS Expecting New SEC Guidance

When originally released in July 2008, the proposed guidance focused on the role of investment company boards in overseeing the best execution obligations of their investment advisers, including conflicts of interest which may exist when using mutual fund brokerage to acquire research services. CAPIS, along with many others, commented on this proposal. We offered some suggestions for refinement that the SEC could consider in an effort to better assist directors in fulfilling their responsibilities. We expressed our appreciation that the proposal took another step to reinforce the fact that paying for research, either through independent brokers, bundled brokers or through client commission arrangements (CCAs) are all activities involving the use of "soft dollars" and thus should be treated equally. However, we voiced concerns that third-party research arrangements may receive a higher level of scrutiny, merely because the practice is so transparent. We hope the Commission will make it clear that bundled research may be an area requiring additional review since this practice does not explicitly delineate between commissions received for research versus those for execution services.

We also noted that the proposal recommends that directors inquire as to how their advisors allocate research on an account-by-account basis. This level of review would not only create a new standard under 28(e), but also create a burdensome task that would result in inconsistent and inaccurate information. Tracking research on an account-by-account basis has not only been deemed impractical but would also expand the boundaries of the Congressional intent surrounding 28(e) when it was created.

Additionally, we requested the Commission clarify or eliminate some additional content that appeared to create inconsistent or negative connotations regarding advisor's practices in regard to the use of mutual fund brokerage.

In the proposal, the SEC made it clear that it was not their intent to impose new or additional obligations on fund directors or advisers. Nor, was it intended as a one-size-fits-all mandate. Rather, it was their goal to provide directors with a flexible framework in which to monitor their investment advisor's activities. However, Bloomberg reports that President Obama

has plans to grant the SEC the power to "ban practices deemed harmful to investors such as conflicts of interest and require brokers to recommend only products that are in their clients' best interest." This has caused us to wonder not only what changes will be made in the final guidance, but if the guidance will be released at all. By following the President's plan, the SEC may be required to make sweeping changes to the proposal, which initially seems to be a direct contradiction of the original intent.

We are hopeful that the SEC will release the final guidance as planned and that it will reflect the refinements we suggested. We believe that as proposed, the guidance is a solid step in restoring industry confidence in a long-standing and valuable practice that helps balance competition and supports the growth of smaller investment managers and research providers. But until we learn more about the administration's expectations, we are unsure of what the futures holds in regard to this guidance. Rest assured that we will keep you up-to-date on this issue as we learn more.

* Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices SEC Rel. Nos. 34-58264; IC-28345; IA-2763 (July 30, 2008)



Technology makes it work. **People make it happen.**

800.247.6729 | www.capis.com

Member: NYSE, FINRA, SIPC

[Forward email](#)

✉ [SafeUnsubscribe®](#)

This email was sent to pbednar@capis.com by pbednar@capis.com.
[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).