The SEC recently released proposed guidance for boards of directors of registered investment companies. The guidance is designed to provide fund directors with a flexible framework in fulfilling their fiduciary responsibility in overseeing the activities of the investment advisers that trade their funds' assets.

The proposed guidance would not impose any new or additional requirements and does not change the July 2006 interpretive guidance on client commission practices. This newly proposed guidance is complementary to the 2006 release and the recently proposed guidance on Form ADV Part II.

The proposal focuses on the following:

- Reiterating the fund director's fiduciary obligation in overseeing how the funds' assets are being used.
- Encouraging open dialogue between fund boards and investment advisers on how fund assets are being used.
- Providing flexible guidelines to fund directors in overseeing how investment advisers
  - Satisfy their best execution obligations
  - Select broker partners
  - Use fund brokerage commissions
  - Ensure their policies and procedures with regards to research and brokerage services purchased with fund commissions fall within the safe harbor of Section 28(e)
- Assisting fund boards in directing investment advisers as to how fund assets should be used.
- Assisting fund boards in carrying out their responsibilities under Section 15(c).
  - The proposal states that a fund board's review of adviser compensation should include any client commission arrangement (CCA)/soft dollar benefits the adviser receives.
- Helping fund boards oversee potential conflicts of interest that may arise when a fund adviser
  - Executes trades through an affiliate
  - Determines the allocation of trades among its clients
  - Trades securities between clients
  - Uses fund brokerage to pay for research and brokerage services

One of the much discussed topics is how the fund's investment advisers utilize client commission arrangements, or soft dollars, for research and brokerage services.

Andrew Donohue, head of the SEC's investment management division, stressed that the Commission isn't trying to eliminate the use of CCAs/soft dollars, but provide a framework to encourage fund board directors to have an open dialogue with their investment adviser's on the use of fund assets to ensure they are being used in the best interests of the fund. Mr. Donohue reiterated the value of using client commissions to obtain research and brokerage services under the safe harbor of Section 28(e).

The proposed guidance is open for comment until October 1, 2008. Of note is the Commission's request for comment on:

- Whether the Commission should propose that advisers be subject to new disclosure requirements concerning the use of client commission arrangements to investment company shareholders and other investment advisory clients.
- Whether the Commission should again consider proposing to require investment advisers to provide their clients with customized information about how their individual brokerage is being used.

To view the full release, please click on the following link http://www.sec.gov/rules/proposed/2008/34-58264.pdf.