

# New SEC Guidance Aims to Ease Funds' DOL Rule Fallout

By Whitney Curry Wimbish, *BoardIQ*, January 10, 2017 [subscription required]

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As long as they're specific about it, mutual funds may list sales loads associated with their distributors in a prospectus appendix, the Securities and Exchange Commission said in recent guidance.

Distributors might not like having the loads they charge side-by-side with their competitors', but the regulatory advice will help both independent fund directors and investors alike, industry observers say. It will make it easier for the fund board to see a comprehensive picture of distribution costs, and investors will more clearly see what they're paying for – and whether they can get it cheaper from a different broker.

The guidance comes after the Department of Labor passed its fiduciary rule, which has led intermediaries to ask mutual funds to alter their distribution agreements or create new share classes suited to their individual needs.

But meeting those requests spawns a variety of issues, not least of which are the long passages necessary to describe them all.

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Independent directors may want to approach the matter in a similar fashion, by looking at the entire distribution arrangement, as the SEC described in [guidance last January](#), says Niels Holch, a partner at **Holch & Erickson** and executive director of the Coalition of Mutual Fund Investors.

“Directors have to evaluate all the fees related to distribution,” he says. “This should be part of that evaluation: what are all the fees that each broker-dealer is getting for marketing our shares?”

Several years ago, the SEC considered the idea of stripping sales charges from mutual fund shares as part of the 2010 12b-1 reform proposal.

“Under the proposed elective provision, a fund (or a class of the fund) could issue shares at net asset value (i.e., without a sales load), and dealers could impose their own sales charges based on their own schedules and in light of the value investors place on the dealer's services,” the commission wrote at the time.

“In effect, this exemption would allow the unbundling of the sales charge components of distribution from the price of fund shares, similar to the existing ETF distribution model. The proposed rule amendment is, among other things, designed to provide flexibility to fund

underwriters and dealers, encourage price competition among dealers offering mutual funds and, ultimately, benefit fund investors.”

The agency has since abandoned Rule 12b-1 reform.

The latest guidance doesn't necessarily suggest a perfect solution to the practicalities of multiple share classes, Holch says, and investors may still be confused by the sales charges listed in an appendix. On the other hand, he says some will probably use the list to comparison shop.

“This new guidance is a practical solution to a complex problem. If you have to have different sales charges for different distributors, you're going to come up with massive prospectuses,” says Holch. “We're already not sure who reads them.”