

Press Release

SEC Launches Share Class Selection Disclosure Initiative to Encourage Self-Reporting and the Prompt Return of Funds to Investors

FOR IMMEDIATE RELEASE

2018-15

Washington D.C., Feb. 12, 2018 — The Division of Enforcement of the Securities and Exchange Commission today announced a self-reporting initiative that seeks to protect advisory clients from undisclosed conflicts of interest and return money to investors.

Under the Share Class Selection Disclosure Initiative (SCSD Initiative), the Division will agree not to recommend financial penalties against investment advisers who self-report violations of the federal securities laws relating to certain mutual fund share class selection issues and promptly return money to harmed clients.

Section 206 of the Investment Advisers Act of 1940 imposes a fiduciary duty on investment advisers to act in their clients' best interests, including an affirmative duty to disclose all conflicts of interest. A conflict of interest arises when an adviser receives compensation (either directly or indirectly through an affiliated broker-dealer) for selecting a more expensive mutual fund share class for a client when a less expensive share class for the same fund is available and appropriate. That conflict of interest must be disclosed.

The Commission has long been focused on the conflicts of interest associated with mutual fund share class selection. Differing share classes facilitate many functions and relationships. However, investment advisers must be mindful of their duties when recommending and selecting share classes for their clients and disclose their conflicts of interest related thereto. In the past several years, the Commission has charged nine firms with failing to disclose these conflicts of interest. These actions included significant penalties against the investment advisers, and collectively returned millions of dollars to clients. In addition, the Commission's Office of Compliance Inspections and Examinations has repeatedly [cautioned investment advisers](#) and other market participants to examine their share class selection policies and procedures and disclosure practices.

"This focused initiative reflects our effort to allocate our resources in a way that effectively targets the continued failure by some advisers to disclose conflicts of interest around share class selection and, importantly, is intended to facilitate the prompt return of money to victimized investors," said Stephanie Avakian, Co-Director of the Division of Enforcement.

"The legal and regulatory requirements in this area are clear, and the Commission will continue to pursue securities violations associated with mutual fund share class selection disclosure failures. We strongly encourage advisers to take advantage of the favorable terms we are offering; these terms will not be available to advisers who do not self-report under this initiative, and we will continue to proactively seek to identify and pursue investment advisers that fail to make the necessary disclosures," said Steven Peikin, Co-Director of the Division of Enforcement.

Under the SCSD Initiative, the Enforcement Division will recommend standardized, favorable settlement terms to investment advisers that self-report that they failed to disclose conflicts of interest associated with the receipt of 12b-1 fees by the adviser, its affiliates, or its supervised persons for investing advisory clients in a 12b-1 fee paying share class when a lower-cost share class of the same mutual fund was available for the advisory clients. Among other things, for eligible advisers that participate in the SCSD Initiative, the Division will recommend settlements that will require the adviser to disgorge its ill-gotten gains and pay those amounts to harmed clients, but not impose a civil monetary penalty. The Division warns that it expects to recommend stronger sanctions in any future actions against investment advisers that engaged in the misconduct but failed to take advantage of this initiative.

"Proper disclosure of conflicts of interest is of utmost importance, and a necessity for any investment adviser to ensure that it is satisfying its obligations as a fiduciary to its clients," said C. Dabney O'Riordan, Co-Chief of the Asset Management Unit in the Division of Enforcement. "This initiative is designed to promote compliance with these obligations with respect to mutual fund share class selection, while at the same time quickly returning money to harmed clients."

Eligibility for the SCSD Initiative is explained in a [detailed announcement](#) by the Enforcement Division. Investment advisers must notify the Division of Enforcement of their intent to self-report no later than June 12, 2018, by email to SCSDInitiative@sec.gov or by mail to SCSD Initiative, U.S. Securities and Exchange Commission, Denver Regional Office, 1961 Stout Street, Suite 1700, Denver, Colorado 80294.

The SCSD Initiative is being led by the Asset Management Unit.

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Related Materials

- [Announcement](#)