

# SEC Charges VALIC Financial Advisors with Failing to Disclose Payments to Promote Services to Florida Educators

## SEC Also Charges VALIC Financial Advisors in Separate Action for Mutual Fund Selection Violations

**FOR IMMEDIATE RELEASE**  
**2020-164**

*Washington D.C., July 28, 2020* —The Securities and Exchange Commission today charged Houston-based VALIC Financial Advisors Inc. (VFA) in a pair of actions for failing to disclose to teachers and other investors practices that generated millions of dollars in fees and other financial benefits for VFA.

In the first action, the SEC found that VFA failed to disclose that its parent company paid a for-profit entity owned by Florida K-12 teachers' unions to promote VFA and its parent company services to teachers.

In the second action, the SEC found that VFA failed to disclose conflicts of interest regarding its receipt of millions of dollars of financial benefits that directly resulted from advisory client mutual fund investments that were generally more expensive for clients than other mutual fund investment options available to clients.

VFA agreed to pay approximately \$40 million to settle the charges in these two actions. In the first action, VFA agreed to cap advisory fees for all Florida K-12 teachers who currently participate (and, in some cases, those who prospectively participate) in its advisory product in Florida's 403(b) and 457(b) retirement programs. This will result in significant savings for thousands of teachers.

### **VFA Failed to Disclose Payments Made in Exchange for Referral of Teachers**

VFA is a financial services vendor in nearly every school district in Florida. According to the SEC's order, VFA's parent company, The Variable Annuity Life Insurance Company (VALIC), for 13 years made payments to an entity owned by the Florida teachers' unions in exchange for that entity's exclusive endorsement of VFA as its preferred financial services partner and the entity's agreement to not promote or endorse VFA's competitors. VALIC also provided the entity owned by the teachers' unions three full-time employees to serve as "member benefit coordinators." These coordinators – who deceptively presented themselves as employees of the entity owned by the teachers unions – promoted VALIC and VFA to Florida K-12 teachers, including at benefits fairs and financial planning seminars, and referred teachers to VFA for investment recommendations. The order finds that the member benefit coordinators increased VFA's access to K-12 teachers in Florida, and that VFA did not disclose that the for-profit entity was paid to make VFA its preferred financial services provider.

VFA (together with VALIC) earned more than \$30 million on the products it sold to Florida K-12 teachers during the period covered by the SEC's order.

"Teachers need and deserve our attention, and we are dedicated to ensuring they receive all of the information they are entitled to when making decisions about their financial futures," said Chairman Jay Clayton. "Too often educators are targeted with misconduct related to their investments. Our nation's educators, and our Main Street investors more generally, are entitled to full and accurate information about the incentives and conflicts affecting their financial advisors."

"By failing to disclose to teachers that it was making payments to and providing employees for the union-owned entity in exchange for that entity referring teachers to VFA, VFA took advantage of the trust teachers placed in that

entity,” said Stephanie Avakian, Co-Director of the SEC’s Division of Enforcement. “Like all investors, teachers need full and fair disclosure.”

“Financial relationships and affiliations in the K-12 teachers’ retirement sector can impact teachers’ financial interests,” added Steven Peikin, Co-Director of the SEC’s Division of Enforcement. “It is critical that teachers get the information they need to make informed decisions about their retirement options.”

The SEC’s Office of Investor Education and Advocacy today issued an [Investor Bulletin](#) with tips to help teachers make informed investment decisions, including about retirement plans. The agency offers [resources for teachers and investing](#) and provides outreach and education to teachers through its [Office of Investor Education and Advocacy](#), [Retail Strategy Task Force](#), and its [San Francisco Regional Office](#).

### **VFA Failed to Disclose Millions of Dollars in Financial Benefits It Received for Investing Clients in Certain Funds**

The SEC separately charged VFA for making false and misleading statements about, and otherwise failing to disclose, conflicts related to its receipt of millions of dollars of financial benefits from client mutual fund investments.

According to the SEC’s order, VFA’s wrap agreements with its clients provided that the advisory fee the client paid to VFA included the costs to execute securities transactions. The order finds that VFA either directly invested or instructed its primary sub-adviser to select new mutual fund investments for clients that were part of VFA’s clearing broker’s no-transaction fee program (NTF Program), and thus would not incur a transaction fee VFA would be responsible for paying. The NTF Program mutual funds were generally more expensive than other mutual funds available to VFA clients, including instances when a less expensive mutual fund share class for the same fund was available outside the NTF Program.

The order finds that VFA’s participation in the NTF Program generated three key financial benefits to VFA, and that VFA not only failed to provide disclosures regarding these conflicts, but also provided false and misleading disclosures concerning the conflicts. The order sets forth that VFA received both 12b-1 fees and revenue sharing from the clearing broker for client investment in mutual funds within the NTF Program. In addition, according to the order, for clients with wrap agreements in which VFA was responsible for client execution costs, VFA financially benefited by not having to pay any transaction fees for mutual funds in the NTF Program. Despite being eligible to do so, VFA did not self report its receipt of undisclosed 12b-1 fees as part of the Division of Enforcement’s [Share Class Selection Disclosure Initiative](#) announced in February 2018.

“Investment advisers must disclose conflicts between their financial interests and those of their clients,” said Mr. Peikin. “Here, VFA for years reaped million in benefits at its clients’ expenses while not only failing to disclose the conflicts, but while providing false and misleading information.”

“VFA misled clients by telling them that their advisory fee would cover execution costs without also telling them that VFA would put them in more expensive mutual fund share classes and thus avoid paying those costs.” Ms. Avakian added. “By not disclosing these practices as well as the other financial benefits VFA received, the firm deprived its clients of essential information about their relationship with their adviser and violated core fiduciary obligations.”

Investors can find additional [information](#) about how fees and expenses may impact their portfolios at [Investor.gov](#).

### **Summary of Settlement Terms**

The SEC’s order concerning Florida teachers finds that VFA willfully violated Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rules 206(4)-3 and 206(4)-7 thereunder. Without admitting or denying the SEC’s findings, VFA has consented to a cease-and desist order, a censure, and a civil penalty of \$20 million. VFA has also agreed to set advisory fees for all Florida K-12 teachers who currently participate in its advisory product in Florida’s 403(b) and 457(b) retirement programs, or who currently or may within the next five years own certain other VALIC Financial Advisors products, at its most favorable rates in the Florida K-12 market.

The SEC’s investigation leading to this order was conducted by Heather E. Marlow and supervised by Jeremy Pendrey, both of the Asset Management Unit and the San Francisco Regional Office, and supervised by Monique C. Winkler, Associate Regional Director, and Erin Schneider, Director, of the San Francisco Regional Office and C. Dabney O’Riordan, Co-Chief of the Asset Management Unit. The investigative team appreciates the assistance of Jill Persson of the San Francisco Regional Office Teacher Investment Outreach Team and Charu Chandrasekhar, Chief of the SEC’s Retail Strategy Task Force.

The SEC's order concerning VFA's mutual fund fee disclosure practices finds that VFA violated Sections 206(2) and 206(4) of the Investment Advisers Act and Rule 206(4)-7 thereunder. Without admitting or denying the SEC's findings, VFA has consented to a cease-and desist order, a censure, disgorgement and prejudgment interest of over \$15.4 million, and a civil penalty of \$4.5 million. The over \$19.9 million in monetary relief will be placed into a fund for distribution to investors affected by this conduct.

The SEC's investigation leading to this second order was also conducted by the Asset Management Unit, including industry expert John Farinacci, senior counsel Frank Goodrich and senior trial counsel Jennifer Reece of the Fort Worth Regional Office, and supervised by Barbara Gunn and Ms. O'Riordan.

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