

## [Securities Regulation Daily Wrap Up, TOP STORY—SEC launches initiative to encourage self-reporting of share class selection disclosure failures, \(Feb. 12, 2018\)](#)

Securities Regulation Daily Wrap Up

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The SEC's Enforcement Division has announced an initiative to protect advisory clients from undisclosed conflicts of interest and encourage advisers to self-report violations. Under the Share Class Selection Disclosure (SCSD) Initiative, the Division will agree not to recommend civil penalties against investment advisers that voluntarily report mutual fund share class selection issues and promptly return ill-gotten gains to affected clients.

"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](#) Enforcement Co-Director Steven Peikin.

**Conflicts of interest.** Advisers Act Section 206 imposes a fiduciary duty on investment advisers to act in their clients' best interests, as well as an affirmative duty to disclose conflicts of interest. The Commission may file an enforcement action alleging a violation against an investment adviser that fails to disclose conflicts, including those associated with the receipt of 12b-1 fees for recommending and/or investing client funds in a 12b-1 fee-paying share class when a lower-cost share class was available for the same fund.

Over the past several years, the SEC has filed numerous actions in which an investment adviser failed to make required disclosures relating to its selection of mutual fund share classes and related fees. In addition to returning money to clients, the actions also included significant civil penalties against the advisers.

**SCSD Initiative.** In light of the Commission's concern that many advisers have not been complying with their obligations to fully disclose all material conflicts related to their mutual fund share class selection practices, the [SCSD Initiative](#) is intended to identify and promptly remedy potential violations. Under the initiative, the Enforcement Division will recommend standardized, favorable settlement terms for advisers that self-report failures to disclose conflicts associated with the receipt of 12b-1 fees. The Division will recommend a settlement in which the adviser neither admits nor denies the findings of the Commission and order disgorgement and other undertakings as appropriate with regard to the adviser's particular circumstances. For eligible advisers, the Division will recommend that the SEC not impose a penalty.

Investment advisers must notify the Division of Enforcement of their intent to self-report no later than June 12, 2018. An adviser that has timely self-reported must then, within 10 business days, confirm its eligibility for the SCSD Initiative by submitting a completed [questionnaire](#) and [attachment](#) providing information regarding, among other things: (1) identification and contact information for the adviser, and, as appropriate, affiliated broker-dealer; (2) the circumstances that led to the disclosure issue; and (3) the 12b-1 fees received in excess of the lower-cost share class. The adviser must also include a statement that it intends to consent to the applicable settlement terms under the SCSD Initiative.

The Division's announcement notes that the initiative covers only eligible advisers and provides no assurances that individuals associated with the entities will be offered similar terms; advisers that have already been contacted by the Division regarding possible violations also are not eligible. The Division cautioned that it plans to make share class selection practices a priority and to proactively seek out disclosure failures. Advisers are warned to expect stronger recommended sanctions in any future actions in connection with conduct with regard to which they failed to take advantage of the initiative, the Division concluded.

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