SEC Share Class Initiative Returning More Than $125 Million to Investors

Reflecting SEC's Commitment to Retail Investors, 79 Investment Advisers Who Self-Reported Advisers Act Violations Agree to Compensate Investors Promptly, Ensure Adequate Fee Disclosures

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Washington D.C., March 11, 2019 —
The Securities and Exchange Commission today announced settled charges against 79 investment advisers who will return more than $125 million to clients, with a substantial majority of the funds going to retail investors. The actions stem from the SEC's Share Class Selection Disclosure Initiative, which the SEC's Division of Enforcement announced in February 2018 in an effort to identify and promptly correct ongoing harm in the sale of mutual fund shares by investment advisers. The initiative incentivized investment advisers to self-report violations of the Advisers Act resulting from undisclosed conflicts of interest, promptly compensate investors, and review and correct fee disclosures. The orders issued today address advisers who directly or indirectly received 12b-1 fees for investments selected for their clients without adequate disclosure, including disclosures that were inconsistent with the advisers' actual practices.
The SEC's orders found that the investment advisers failed to adequately disclose conflicts of interest related to the sale of higher-cost mutual fund share classes when a lower-cost share class was available. Specifically, the SEC's orders found that the settling investment advisers placed their clients in mutual fund share classes that charged 12b-1 fees – which are recurring fees deducted from the fund's assets – when lower-cost share classes of the same fund were available to their clients without adequately disclosing that the higher cost share class would be selected. According to the SEC's orders, the 12b-1 fees were routinely paid to the investment advisers in their capacity as brokers, to their broker-dealer affiliates, or to their personnel who were also registered representatives, creating a conflict of interest with their clients, as the investment advisers stood to benefit from the clients' paying higher fees.

History of Share Class Selection-Related Violations of the Federal Securities Laws
Investment advisers, as fiduciaries, have an obligation to make full and fair disclosure to clients and prospective clients concerning their material conflicts of interest, including conflicts arising from financial incentives, and to act consistently with those disclosures. This principle is reflected in Form ADV, which reminds advisers of their general obligation to fully disclose material facts relating to their advisory business and specifically requires disclosure concerning the compensation and fees that advisers and their supervised persons receive, including from asset-based charges and service fees.

In light of these obligations, since at least 2013, the Commission has charged investment advisers with failing to disclose conflicts of interest and failing to implement reasonably designed policies and procedures relating to mutual fund share classes, in violation of the Investment Advisers Act. In those cases, the Commission generally required the investment advisers to pay disgorgement and penalties, and to distribute the funds to harmed clients. In 2016, the Commission's Office of Compliance Inspections and Examinations issued a Risk Alert specifically addressing share class disclosure and cautioning investment advisers to examine their policies and procedures. FINRA has

similarly addressed share class selection issues with brokers, imposing censures and fines on brokers that failed to provide adequate disclosures.

Division of Enforcement's Share Class Selection Disclosure Initiative

In February 2018, the SEC's Division of Enforcement announced the creation of the Share Class Selection Disclosure Initiative to address ongoing concerns that, despite the fiduciary duty imposed by the Advisers Act, an OCIE risk alert, Form ADV reminders, and numerous individual Commission enforcement actions, investment advisers were not adequately disclosing, or acting consistently with the disclosure regarding, conflicts of interest related to their mutual fund share class selection practices. These disclosure failures caused harm to investors, particularly retail investors, including being deprived of the ability to make informed investment decisions when purchasing higher-cost share classes. The initiative, which was managed by the Asset Management Unit, enabled investment advisory firms to avoid financial penalties if they timely self-reported undisclosed conflicts of interest, agreed to compensate harmed clients, and undertook to review and correct their relevant disclosure documents. To assist advisers evaluating their eligibility for the initiative, the Division of Enforcement issued answers to frequently asked questions, which provided detailed information about the eligibility of advisers to participate, calculation of disgorgement, and other aspects of the initiative.

The SEC staff is continuing to evaluate self-reports that were received from investment advisers prior to the initiative cut-off date.

Comments of Chairman Jay Clayton and Enforcement Co-Directors Stephanie Avakian and Steven Peikin

"The federal securities laws impose a fiduciary duty on investment advisers, which means they must act in their clients' best interest," said Stephanie Avakian, Co-Director of the SEC's Division of Enforcement. "An adviser's failure to disclose these types of financial conflicts of interest harms retail investors by unfairly exposing them to fees that chip away at the value of their investments."

"The initiative leveraged the expertise of the agency in crafting an efficient approach to remedy a pervasive problem," said Steven Peikin, Co-Director of the SEC's Division of Enforcement. "Most of the advisory clients harmed by the disclosure practices were retail investors, and in just a year's time, we made tremendous headway in putting money back into their hands while significantly improving the quality of firms' disclosures."

"Investment advisers play a vital and trusted role in our markets. They offer a wide array of products and services to our retail investors, ranging from one-time advice on a model investment portfolio to comprehensive planning combined with continuous investment advice and other services. Regardless of the scope and duration of the investment advisory services, investment advisers are fiduciaries and, as such, their duties of care and loyalty require them to disclose their conflicts of interest, including financial incentives," said SEC Chairman Jay Clayton. "I am pleased that so many investment advisers chose to participate in this initiative and, more importantly, that their clients will be reimbursed. This initiative will have immediate and lasting benefits for Main Street investors, including through improved disclosure. Also, I am once again proud of our Division of Enforcement for their vigorous and effective pursuit of matters that substantially benefit our long-term, retail investors."

Summary of Settlement Terms

The SEC's orders found that the settling investment advisers violated Section 206(2) and, except with respect to state-registered only advisers, Section 207 of the Investment Advisers Act of 1940 by:

- Failing to include adequate disclosure regarding the receipt of 12b-1 fees; and/or
- Failing to adequately disclose additional compensation received for investing clients in a fund's 12b-1 fee paying share class when a lower-cost share class was available for the same fund.

Without admitting or denying the findings, each of the settling investment advisers consented to cease-and-desist orders finding violations of Section 206(2) and, except with respect to state-registered only advisers, Section 207. The firms also agreed to a censure and to disgorge the improperly disclosed fees and distribute these monies with prejudgment interest to affected advisory clients. Each adviser has also undertaken to review and correct all relevant disclosure documents concerning mutual fund share class selection and 12b-1 fees and to evaluate whether existing clients should be moved to an available lower-cost share class and move clients, as necessary. Consistent with the terms of the initiative, the Commission has agreed not to impose penalties against the investment advisers.

The Share Class Selection Disclosure Initiative is being led by the Division of Enforcement's Asset Management Unit under the direction of Dabney O'Riordan, AMU's Chief, and is being coordinated by SEC Assistant Director Jason Burt, attorneys Ronnie Lasky and Brian Basinger, and industry expert John Farinacci. The settlements announced today were coordinated by SEC attorneys Stephen Donahue, Michael Adler, Robert Baker, Cynthia Baran, Michael Moran, William Donahue, Paul Montoya, David Benson, Anne Blazek, Emlee Hilliard-Smith, Michelle Munoz Durk, Andrew Shoenthal, Kara Washington, John Mulhern, Barbara Gunn, Frank Goodrich, Adam Aderton, Corey Schuster, Melissa Robertson, Jessica Neiterman, Donna Norman, Janene Smith, Ivonia Slade, Charles Davis, Max Polonsky, Kate Zoladz, Payam Danialypour, Adam Schneir, Al Tierney, Panayiota Bougiamas, Karen Willenken, Brendan McGlynn, Oreste McClung, Christine R. O'Neil, Jeremy Pendrey, Jessica Chan, Heather Marlow, and Ariana Torchin, and industry expert Dan Pines. The Division appreciates the substantial assistance provided by the Office of Compliance Inspections and Examinations, which has for years identified deficiencies on these issues; and the Division of Investment Management.

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Firms Charged:

- Ameritas Investment Corp.
- AXA Advisors LLC
- BB&T Securities LLC
- Beacon Investment Management LLC
- Benchmark Capital Advisors LLC
- Benjamin F. Edwards & Co. Inc.
- Blyth & Associates Inc.
- BOK Financial Securities Inc.
- Calton & Associates Inc.
- Cambridge Investment Research Advisors Inc.
- Cantella & Co. Inc.
- Client One Securities LLC
- Coastal Investment Advisors Inc.
- Comerica Securities Inc.
- Commonwealth Equity Services LLC
- CUSO Financial Services LP
- D.A. Davidson & Co.
- Deutsche Bank Securities Inc.
- EFG Asset Management (Americas) Corp.
- Financial Management Strategies Inc.
- First Citizens Asset Management Inc.
- First Citizens Investor Services Inc.
- First Kentucky Securities Corporation
- First National Capital Markets Inc.
- First Republic Investment Management Inc.
- Hazlett, Burt & Watson Inc.
- Hefren-Tillotson Inc.
- Huntington Investment Company, The
- Infinex Investments Inc.
- Investacorp Advisory Services Inc.
- Investmark Advisory Group LLC
- Investment Research Corp.
- J.J.B. Hilliard, W.L. Lyons LLC
- Janney Montgomery Scott LLC
- Kestra Advisory Services LLC

- Kestra Private Wealth Services LLC
- Kovack Advisors Inc.
- L.M. Kohn & Company
- LaSalle St. Investment Advisors LLC
- Lockwood Advisors Inc.
- LPL Financial LLC
- M Holdings Securities Inc.
- MIAI Inc.
- National Asset Management Inc.
- NBC Securities Inc.
- Next Financial Group Inc.
- Northeast Asset Management LLC
- Oppenheimer & Co. Inc.
- Oppenheimer Asset Management Inc.
- Park Avenue Securities LLC
- PlanMember Securities Corporation
- Popular Securities LLC
- Principal Securities Inc.
- Private Portfolio Inc.
- ProEquities Inc.
- Provise Management Group LLC
- Questar Asset Management Inc.
- Raymond James Financial Services Advisors Inc.
- Raymond Lawrence Lent (d/b/a The Putney Financial Group, Registered Investment Advisors)
- RBC Capital Markets LLC
- Robert W. Baird & Co. Incorporated
- Ryan Financial Advisors Inc.
- SA Stone Investment Advisors Inc.
- Santander Securities LLC
- Select Money Management Inc.
- Silversage Advisors
- Sorrento Pacific Financial LLC
- Spire Wealth Management LLC
- SSN Advisory Inc.
- Stephens Inc.
- Stifel, Nicolaus & Company Incorporated
- Summit Financial Group Inc.
- Syndicated Capital Inc.
- TIAA-CREF Individual & Institutional Services LLC
- Transamerica Financial Advisors Inc.
- Trustcore Financial Services LLC
- Wells Fargo Clearing Services LLC
- Wells Fargo Advisors Financial Network LLC
- Woodbury Financial Services Inc.

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