Regulatory Update:
Enforcement Cases Involving RIA Fees

By Randy Randall, Senior Partner
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INTRODUCTION:

Examination and enforcement focus has shifted toward issues involving retail investors under the current administration. A recurring theme is cases involving operational billing accuracy, fee testing transparency, and document consistency. Firms can take practical steps to avoid examination and enforcement risk.

KEY TAKEAWAYS:

- It is critical to review disclosures regarding fees, cash sweep vehicles, mutual fund share class selection, and potential conflicts arising from transactions with affiliates and compensation received in connection with the execution of client transactions.
- In the event of mergers, carefully review billing arrangements to ensure that billing arrangements in any legacy agreements are consistent with current disclosures.
- Compliance programs should cover fee billing and include testing to verify that billing practices are consistent with disclosures in Form ADV and client agreements, particularly in cases of terminated or inactive accounts.
- Beware of the use of "may" in disclosures when the firm does, in fact, receive the revenue described.

THE DETAILS:

As fiduciaries, investment advisers have an obligation to eliminate, or disclose and mitigate, all conflicts of interest that might incline an investment adviser to render advice that is not disinterested. The SEC continues to aggressively pursue even relatively minor, non-fraudulent overcharges under negligence-based anti-fraud provisions like Section 206(2). Intent to defraud is not required to trigger civil penalties.

Economic Conflicts of Interest

SEC Staff will prioritize the review of economic incentives that advisers and their financial professionals may have to recommend certain products, services, or account types to their clients (e.g., the source and structure of compensation, revenue, or other economic benefits), particularly in cases involving affiliated entities. Recent SEC enforcement and examination findings include:

- Economic conflicts of interest that were undisclosed, or where the disclosures were incomplete or misleading
- Adviser practices that were inconsistent with advisory agreements and disclosures
- Compliance programs that did not fully address economic conflicts of interest and risks

Case in Point: Advisory Fee Offset Failures

The Securities and Exchange Commission recently settled charges against an investment adviser for failing to comply with the terms of its advisory agreements relating to advisory fee calculations, providing disclosures to

clients that were materially inconsistent with the firm's actual advisory fee offset practices, and failing to implement written compliance policies and procedures.[1]

The adviser's client advisory agreements and Form ADV Part 2A provided that if it or its affiliated broker-dealer received referral, solicitation, or placement fees from a third-party investment adviser, fund manager, or issuer on account of a client's investment, the adviser would offset the client's advisory fee by the amount of such fee, to the extent that it did not exceed the client's advisory fee.

The SEC found that the adviser did not deduct a portion of the fees its affiliated broker-dealer received from six third-party fund managers. The SEC also found that the adviser's practice created a conflict of interest because it had an incentive to recommend investments in funds managed by those fund managers due to the additional compensation it stood to receive without offsetting client advisory fees by the same amount, and that the adviser did not disclose this conflict or its extent to its clients.

In addition, the SEC found that the adviser failed to implement certain of its written compliance policies and procedures that required the firm to ensure that it calculated client advisory fees in the manner described in its advisory agreements and to update or amend its advisory agreements to accurately reflect its business practices. As a result, the SEC imposed disgorgement as well as civil penalties.

Cash Sweep and Revenue Sharing Arrangements

The SEC will also focus on cash management program conflicts. It is critical that disclosures regarding revenue sharing arrangements with clearing broker-dealers or clients' custodians are accurate and complete, including:

- Revenue the advisers receive from custodians based on the cash balances their clients held with those custodians
- Incentives to recommend cash sweep vehicles that resulted in the greatest possible compensation to the adviser

To the extent advisers utilize third-party bank cash sweep programs, it is important to fully disclose the benefits the adviser receives. If higher-cost money market funds are recommended, advisers should disclose that lower-cost shares of the same money market funds are available and that these alternative funds do not provide revenue sharing arrangements with the adviser.

Mutual Fund Share Class Selection

Similarly, the SEC continues to find conflicts of interest related to advisers' selection of mutual fund share classes. The share classes selected for the client by the adviser paid the adviser, its related entities, or its individual adviser representatives 12b-1 fees when a lower-cost share class for the same mutual fund was available to their clients. Advisers should also be careful to fully disclose economic benefits with respect to their recommendations regarding custodial credits, margin loans and credits, and transaction markup fees.

Disclosure Language: Avoiding "May"

Advisers should ensure they disclose all revenue received. The SEC will closely scrutinize disclosures stating that an adviser "may" receive revenue where the adviser, in fact, does receive revenue.

[1] https://www.sec.gov/enforcement-litigation/administrative-proceedings/ia-6984

Private Fund Enforcement

The SEC also recently brought an enforcement action against an unregistered private fund adviser and its principal, alleging they defrauded a private fund client and its investors.[2]

The complaint alleges, among other things, that the adviser charged clients fees in excess of those described in the fund's offering and governing documents. This action is consistent with recent enforcement activity in the private fund space. In 2025, the SEC brought cases against private fund advisers involving improper management fee offset calculations, undisclosed conflicts of interest, and material misstatements in marketing and offering materials.

About Randy Randall: *Randy Randall is a Senior Partner at Helios and a seasoned compliance executive and securities attorney with more than 35 years of experience advising investment advisers, broker-dealers, and investment companies. Before joining Helios, Randy spent more than two decades at William Blair, where he served as Chief Compliance Officer and General Counsel for the firm's Investment Management business. He counsels and advises clients on SEC and FINRA regulatory matters, compliance program design, governance, and complex legal and regulatory issues affecting the investment management industry.*

[2] https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26525