Published on *The National Law Review* https://natlawreview.com

SEC Continues its Focus on Advisory Fees

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The ***SEC*** recently brought a settled enforcement action against an SEC-registered investment adviser and its CEO/CCO that represents a continued focus on the calculation of advisory fees. On March 2, 2016, the SEC charged *Marco Investment Management*, LLC (the Adviser), and its CEO/CCO, Steven Marco (Marco), with charging certain clients advisory fees that were calculated in a manner different than provided in the respective advisory agreements. As a result of the fee calculation methodology used for certain clients, the Order found Advisers Act violations relating to books and records (Section 204(a) and Rule 204-2(a) thereunder), policies and procedures (Section 206(4) and Rule 206(4)-7 thereunder), and making misstatements about assets under management on Form ADV (Section 207).

The Adviser's advisory agreements typically provided that the Adviser would charge the client an advisory fee on the market value of all the gross assets in the account. Certain clients had margin agreements in place. These margin agreements stipulated that the proceeds from the sale of securities or other credits were to be immediately applied to reduce any margin balance. However, for certain clients, the Adviser calculated its advisory fees without adjustment for sales proceeds or other credits that had been applied against the margin balance by the custodian. Marco believed that these clients wanted these sales proceeds and credits to be reinvested.

Interestingly, the SEC referenced in a footnote to the Order that the fee calculation methodology for the impacted accounts actually resulted in reduced management fees in some instances. In a letter made publicly available on the Adviser's website, the Adviser claimed that it actually collected over $100,000 less in management fees than it was entitled to between 2010-2014 due to the fee calculation methodology. Regardless, the SEC makes clear in this order that it expects precise fee calculation and disclosure and will bring enforcement action even if, as the Adviser asserts, the entity was a net loser because of the mistakes.

In addition to paying approximately $125,000 in disgorgement and a $100,000 penalty, the Adviser agreed to several undertakings, including an independent compliance consultant, a new CCO, and compliance training. Marco will pay a $50,000 penalty. Neither the Adviser nor Marco admitted wrongdoing.

Please click here to view a copy of the SEC order. Please click here to view a copy of the Adviser's letter to clients.

National Law Review, Volume VI, Number 75