



## Securities Litigation ADVISORY ■

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### SEC Announces Investment Adviser Amnesty for Undisclosed Collection of 12b-1 Fees

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The SEC's Division of Enforcement (the Division) recently announced the [Share Class Selection Disclosure \(SCSD\) Initiative](#), a new self-reporting initiative to encourage investment advisers to self-report undisclosed conflicts of interest stemming from their receipt, either directly or through affiliates, of 12b-1 fees and potential securities law violations relating to mutual fund share class selection. This new initiative further demonstrates that conflicts of interest relating to adviser compensation and share class selection will be a key Division enforcement priority this year. The Division's goal in announcing the SCSD Initiative is to create efficiencies and to free up Division resources, which it believes will further its proactive enforcement efforts against investment advisers who fail to make necessary disclosures or to self-report what it has characterized as compensatory conflicts.

The stated benefits of self-reporting, which must occur by June 12, 2018, are standardized, favorable settlement terms from the SEC, most notably including a Division recommendation against the imposition of a civil penalty. This requires, however, that an adviser admit an illegal conflict, accept a censure and disgorge all 12b-1 fees collected. The Division has also noted that it will seek to identify conflicted advisers who do not self-report through the examination program administered by the SEC's Office of Compliance Inspections and Examinations, and that, in addition to a censure and disgorgement, civil penalties and other potential sanctions will be in play at that time.

As a result, investment advisers that receive 12b-1 compensation should carefully consider the risks and benefits of participation in the SCSD Initiative. Alston & Bird's investment management and SEC enforcement teams are standing by to assist.

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