# SEC Dangles Free Pass on Conflicts of Interest

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The SEC is giving a free pass to advisors who voluntarily come clean about previously undisclosed conflicts of interest and promptly return investors' money.

The announcement comes amid a push by securities regulators to stamp out abuses they describe as potentially rampant in the industry. Twice in the announcement, the SEC says lack of fee disclosures may be "widespread."

At issue is Section 206(2) of the Investment Advisers Act of 1940, which prohibits an investment advisor, directly or indirectly, from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." The Act also imposes a fiduciary duty on investment advisors to act for their clients' benefit, which includes full disclosure of all material facts, such as fees.

Over the past several years, the SEC has filed a number of actions against advisors for failing to make required disclosers concerning mutual fund fees.

In its announcement, the SEC said it recommend 'favorable" settlement terms for advisors who come forward. Advisors will have to disgorge any ill-gotten gains and pay those amounts to harmed clients, but the SEC will not impose a civil monetary penalty.

Neils Holch, executive director of the Mutual Fund Investors Coalition, tells InvestmentNews that the SEC's initiative is comparable to what Finra's actions in the area of break-point discounts.

"This is a reasonably efficient way to clean up this problem," he tells the publication.

The SEC made clear that its offer to waive financial penalties does not apply to advisors who fail to come forward voluntarily. The agency will "continue to proactively seek to identify and pursue investment advisers that fail to make the necessary disclosures," says Steven Peikin, co-director of the SEC's Division of Enforcement, in a press release. In fact, the SEC warned that it would likely impose stronger sanctions in any future actions against advisors who have participated in this type of misconduct, but who do not voluntarily admit it.

*– Cheryl Winokur Munk*