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Insights

SEC Enforcement Action – VALIC Financial Advisors

October 21, 2020 | Insight

3rd Quarter Investment Advisers Newsletter
Kevin S. Woodard

On July 28, 2020, the SEC announced a pair of settled administrative actions against Houston-based VALIC Financial Advisors (VFA).

In the first action, the SEC charged VFA with failing to disclose that its parent company paid a for-profit entity owned by a Florida teacher’s union to promote VFA to Florida teachers. The second action involved VFA’s wrap fee arrangements with clients.

In regards to the second action wrap fee arrangements, VFA instructed a third-party adviser to select from mutual funds in the no-transaction fee program offered by VFA’s clearing firm. The selection of no-transaction fee funds provided various financial benefits to VFA. First, VFA’s agreement with the clearing firm provided VFA with a portion of the revenue the clearing firm received from the mutual fund sponsor and any 12b-1 fees paid on client mutual fund assets. There were many 12b-1 fee-paying mutual fund share classes in the no-transaction fee program. In most instances, the mutual funds the third-party adviser selected had a lower-cost share class available that did not pay 12b-1 fees or that would not have led to revenue sharing to VFA. Second, by instructing the third-party adviser to limit new funds to those in the no-transaction fee program, VFA avoided paying execution costs for the clients’ purchases or sales of the mutual funds in the no-transaction fee program. VFA did not disclose that it had provided this

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instruction to the third-party adviser or the conflicts of interest arising from this instruction.

VFA's activities as detailed in each action generally constituted violations of the anti-fraud provision of the Investment Advisers Act of 1940, specifically Section 206. In settlement of the first action, VFA agreed to a cap on its management fee for the advisory product made available to Florida teachers, as well as a \$20,000,000 civil monetary penalty. In the second action, VFA had already rebated approximately \$2.3 million in 12b-1 fees plus interest to affected clients. In addition, VFA was subject to disgorgement and prejudgment interest, and a civil monetary penalty in a total amount of \$19,943,753.

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