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Special Alert

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SEC Enforcement Action Related to Account Type Conversions

On February 14, 2025, the Securities and Exchange Commission ("SEC") published a settled Administrative Proceeding Order with One Oak Capital Management, LLC ("One Oak") and Michael DeRosa. DeRosa served as an investment adviser representative of One Oak.

Beginning around June of 2020, after DeRosa became an investment adviser representative of One Oak, DeRosa recommended that his customers at a separate broker-dealer, with which he was simultaneously employed as a registered representative, convert more than 180 brokerage accounts to advisory accounts at One Oak. In making such recommendations, and engaging in the account conversions, DeRosa and One Oak failed to: disclose advisory fees, disclose conflicts of interest, provide Form ADV Part 2A and review such converted accounts for suitability.

Failure to Disclose Advisory Fees and Conflicts of Interest and to Provide Form ADV Part 2A

As stated by the SEC in the Order, One Oak and DeRosa had a fiduciary duty under the Investment Advisers Act of 1940 (the "Advisers Act") to disclose to their clients all material

facts about the advisory relationship, including the fees they charge for their services and any conflicts of interest between themselves and their advisory clients.

One Oak's compliance policies and procedures require that the firm obtain "completed" investment management agreements signed by clients before providing advisory services or charging fees. In addition, One Oak's compliance policies and procedures required One Oak's Chief Compliance Officer to periodically review the fee schedules included with the investment management agreements and review client fees for accuracy. In violation of these policies and procedures, DeRosa provided some clients with investment management agreements that did not include a fee schedule. Also, for approximately 60 client accounts, DeRosa failed to provide an investment management agreement at all before providing advisory services, and before One Oak began to charge advisory fees. In some instances, under the supervision of DeRosa, One Oak personnel provided clients with investment management agreements with blank fee schedules, and then filled in the fee schedule with the advisory fee after the clients signed the investment management agreement. These clients were not provided with the completed investment management agreements or any other disclosures regarding the specific advisory fee they would be charged.

Pursuant to One Oak's compliance policies and procedures and Advisers Act Rule 204-3, clients are to be provided a copy of One Oak's Form ADV Part 2A ("brochure") before or at the time of entering into an advisory agreement with One Oak. One Oak failed to deliver required brochures to certain clients before, or at the time of, account opening.

One Oak and DeRosa never disclosed in advance to these clients the conflict of interest applicable to both One Oak and DeRosa. Specifically, it was never disclosed to these clients in advance that these conversions from brokerage accounts to advisory accounts resulted in significantly higher fees for clients, and increased compensation for DeRosa, nor disclosed the resulting conflict of interest. As an example, the SEC notes in the Order that the accounts converted in 2020 and 2021 incurred a more than seven-fold increase in fees and costs, on average, and some clients paid more than ten times in advisory fees to One Oak as they paid commissions to the broker-dealer over a similar time period. Despite the higher fees charged to these accounts, DeRosa did not significantly alter the trading activity of the accounts following conversion to advisory accounts, or generally provide additional services to these accounts. The SEC notes that in some instances, the number of transactions post-conversion decreased significantly. Many of the accounts had few, if any, trades for more than a year after their conversion to advisory accounts.

Failure to Review Accounts for Suitability

An investment adviser's fiduciary duty includes a duty of care, as well as a duty of loyalty. To fulfill the duty of care, an investment adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives and must generally provide advice and monitoring over the course of the entire relationship. In the Order, the SEC says an investment adviser's fiduciary duty applies to all investment advice the adviser provides to clients, including advice about account type, e.g. a commission-based brokerage account or a fee-based advisory account. In addition, the SEC says an investment adviser's duty to monitor extends to all personalized advice it provides to the client, including in an ongoing relationship, an evaluation of whether a client's account type continues to be in the client's best interest.

One Oak's brochure provided that One Oak conducted daily and quarterly reviews of client accounts. In addition, One Oak's compliance policies and procedures provided that One Oak "reviews the suitability of any advisory service programs offered to the client at the time of account opening" and that One Oak thereafter periodically reviews and updates is suitability determinations.

In the Order, the SEC provides that One Oak did not adequately consider whether, in light of clients' investment profiles and the characteristics of the accounts at issue, its recommendation to convert their brokerage accounts to advisory accounts was in the clients' best interest. In addition, One Oak did not have access to sufficient information about these clients with which to evaluate the suitability of their specific investments, other than the client's age. DeRosa generally did not obtain information from clients regarding their investment objectives or risk tolerance in writing.

One Oak and DeRosa did not fulfill their fiduciary duty of care because they did not conduct meaningful reviews of whether these accounts were suitable to be advisory accounts.

The actions of One Oak and DeRosa violated Section 206(2) of the Advisers Act, the general anti-fraud provision of the Advisers Act. One Oak violated Section 206(4) and Rule 206(4)-7 of the Advisers Act by engaging in fraudulent, deceptive or manipulative conduct and for failing to implement reasonably designed compliance policies and procedures. In addition, One Oak violated Section 204 and Rule 204-3 of the Advisers Act due to the failure to deliver the One Oak brochure to these clients.

Pursuant to the terms of the Order, One Oak agreed to notify former and current clients of these converted accounts of the settlement with the SEC and the terms of the Order. In addition, One Oak agreed to hire an independent compliance consultant. Finally, One Oak agreed to pay a civil monetary penalty of $150,000. DeRosa was subject to nine months suspension from affiliation with relevant financial services firms, as well as a $75,000 civil monetary penalty.

Here is the link to the Enforcement Action: https://www.sec.gov/files/litigation/admin/2025/34-102425.pdf

Questions? Contact the DCS Team

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Kevin Woodard
President
(513) 977-8646
Kevin.woodard@dinsmorecomplianceservices.com

Jeff Chapman
Director of Client Relations
(513) 977-8647
Jeff.chapman@dinsmorecomplianceservices.com

dinsmorecomplianceservices.com