

OCIE Issues Risk Alert on Compliance Issues for Advisory Fees and Expenses Practices

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The Securities and Exchange Commission's Office of Compliance Inspections and Examinations (OCIE) recently released a Risk Alert summarizing the most frequent compliance issues relating to fees and expenses from over 1,500 deficiency letters sent to registered investment advisers during the past two years, which they further cited in a recent compliance forum as a high enforcement and compliance priorities for the coming year. Advisers should take particular note of the following, which were identified as the most frequent compliance issues relating to fees and expenses:

- **Fee-billing based on incorrect account valuations:** The OCIE staff has observed instances where advisers valued assets in a client's account using metrics or processes differing from those specified in the advisory agreement that resulted in overbilled fees.
- **Improper timing or frequency of billing by advisers:** The OCIE staff has noted instances where advisory fees were billed in contradiction to the terms of the advisory agreement or disclosures in the adviser's Form ADV Part 2, including where the adviser (1) billed on a monthly rather than a quarterly basis, (2) billed in advance rather than in arrears, (3) failed to pro-rate charges for a billing cycle when appropriate and (4) failed to reimburse a pro-rated portion of fees following the client's termination of services mid-billing cycle.
- **Applying incorrect fee rates when calculating advisory fees:** The OCIE staff has noted instances where an adviser (1) applied a higher rate than that agreed upon in the advisory agreement, (2) double-billed a client and (3) charged a non-qualified client performance fees based on a percentage of capital gains in contradiction to Section 205(a)(1) of the Investment Advisers Act of 1940 ("Advisers Act").
- **Omitting rebates and applying discounts incorrectly, resulting in overcharging:** The OCIE staff has noted instances where advisers failed to apply appropriate discounts in accordance with the Form ADV or advisory agreement and where advisers charged additional fees where a bundled fee arrangement applied.
- **Issues relating to disclosure of advisory fees in the Form ADV:** The OCIE highlighted instances where advisers made disclosures in the Form ADV inconsistent with actual billing practices or failed to disclose additional fees or markups.
- **Misallocations of fund expenses by advisers:** The OCIE noted examples where an adviser allocated marketing expenses, filing fees and travel expenses to clients, rather than to the adviser in accordance with the applicable advisory agreement, operating agreement or disclosures.

In light of the observations released by the OCIE, advisers are cautioned to review their billing practices and procedures as well as client disclosures (including in Form ADV) and advisory agreements to ensure consistency with stated terms and compliance with the Advisers Act and rules promulgated thereunder. The full text of the OCIE's Risk Alert is available [here](#).

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