

INSIGHTS

## SEC Continues Crackdown on Investment Advisers

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The Securities and Exchange Commission (SEC) is continuing to pursue enforcement actions that focus on the accuracy and comprehensiveness of economic benefit disclosures – both to clients and in public filings.

On September 2, 2014, the SEC instituted administrative and cease-and-desist proceedings against The Robare Group, Ltd., an investment adviser located in Houston, Texas. Robare Group's founders were also individually charged. According to the order, available [here](#), Robare Group failed to disclose to clients that it was party to a compensation agreement with a broker-dealer that entitled Robare Group to a percentage of every dollar its clients invested in certain mutual funds offered by the broker-dealer. The agreement, according to the SEC, "created incentives for Robare Group to favor particular mutual funds... and to favor the Broker's platform when giving investment advice to its clients."

The SEC charged that this conflict of interest was not disclosed to Robare Group's clients for years, and then was inadequately disclosed when Robare Group entered into a new agreement with the broker in 2012. In addition, from 2005 until it filed its December 2011 Form ADV, Robare Group failed to disclose the existence of the compensation agreement in its Forms ADV filed with the SEC.

Item 13.A. of former Form ADV Part II specifically requires investment advisers to disclose any arrangement where they receive direct or indirect compensation in connection with giving advice to clients. Item 14.A of Form ADV Part 2A, in effect as of July 2010, requires advisers to disclose compensation from non-clients received for providing investment advisory services to clients, as well as resulting conflicts and how the adviser addresses them.

Although Robare Group revised its Form ADV in 2011 to disclose the compensation agreement, the SEC still charged the adviser for failing to identify the potential conflicts of interest created by the arrangement. The agency also censured Robare Group for stating in its disclosure that it "may" receive compensation from the broker, when it was, in fact, already receiving payments.

Robare Group and its founders faced a host of violations under the Securities Exchange Act, the Investment Advisers Act and the Investment Company Act.

Investment advisers should take note that the SEC is continuing to focus on economic benefit disclosures, so any compensation agreements should be thoroughly vetted for disclosure obligations. But, the requirements do not stop there: an adviser must also examine how it can (1) clearly and comprehensively disclose any and all conflicts of interest arising from such agreements and (2) carefully detail how the adviser addresses these conflicts.