

November 20, 2018

## SEC Scrutiny of Share Class Selection Practices Intensifies

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Last February, the Division of Enforcement of the SEC (the “Division”) launched the Share Class Selection Disclosure Initiative (the “Initiative”). The Initiative enabled registered investment advisers (“RIAs”) to self-report their failure to disclose certain mutual fund share class selection practices as conflicts of interest on their Form ADVs.<sup>[1]</sup> In return, the Division would recommend that the SEC accept a settlement with the self-reporting RIA that, among other things, would not include the imposition of civil penalties.<sup>[2]</sup> For a variety of reasons, many RIAs elected not to self-report (“Non-reporting RIAs”) before the Initiative ended on June 12, 2018. <sup>[3]</sup> The Division has stated that it will continue to make mutual fund share class selection practices a priority.<sup>[4]</sup> It has also stated that Non-reporting RIAs that should have self-reported could be subject to greater penalties, including fines, than those incurred by RIAs that self-reported in the Initiative.<sup>[5]</sup> Based on these statements and conversations with people within the industry, we understand that the SEC is in the process of launching an enforcement sweep. Non-reporting RIAs that believe, or are unsure of whether, they should have self-reported in the Initiative should consider obtaining legal assistance as soon as possible and, in any event, before responding to a regulator. These questions may arise in the context of a sweep letter, a subpoena or an examination request.<sup>[6]</sup> If you have any questions about the Division’s interest in mutual class selection practices, or in the regulation of RIAs generally, please feel free to contact us. **Lauren Jackson** is counsel and **John I. Sanders** and **Ali Fenno** are associates based in the firm’s Winston-Salem office. <sup>[1]</sup> Specifically, the Division is concerned with RIAs that have “select[ed] a more expensive mutual fund share class for a client when a less expensive share class for the same fund is available and appropriate,” e.g., where the advisor receives 12b-1 fees from one class but not from another. *SEC Launches Share Class Selection Disclosure Initiative to Encourage Self-Reporting and the Prompt Return of Funds to Investors*, SEC (February 12, 2018), <https://www.sec.gov/news/press-release/2018-15>. <sup>[2]</sup> *Share Class Selection Disclosure Initiative*, SEC Division of Enforcement (Feb. 9, 2018), <https://www.sec.gov/enforce/announcement/scsd-initiative>. <sup>[3]</sup> *Id.* <sup>[4]</sup> *Id.* <sup>[5]</sup> *Id.* <sup>[6]</sup> *2018 National Exam Program Examination Priorities*, SEC (Feb. 7, 2018), <https://www.sec.gov/news/press-release/2018-12> (Including share class selection and best execution among the SEC Office of Compliance Inspections and Examination’s examination priorities for the fiscal year).