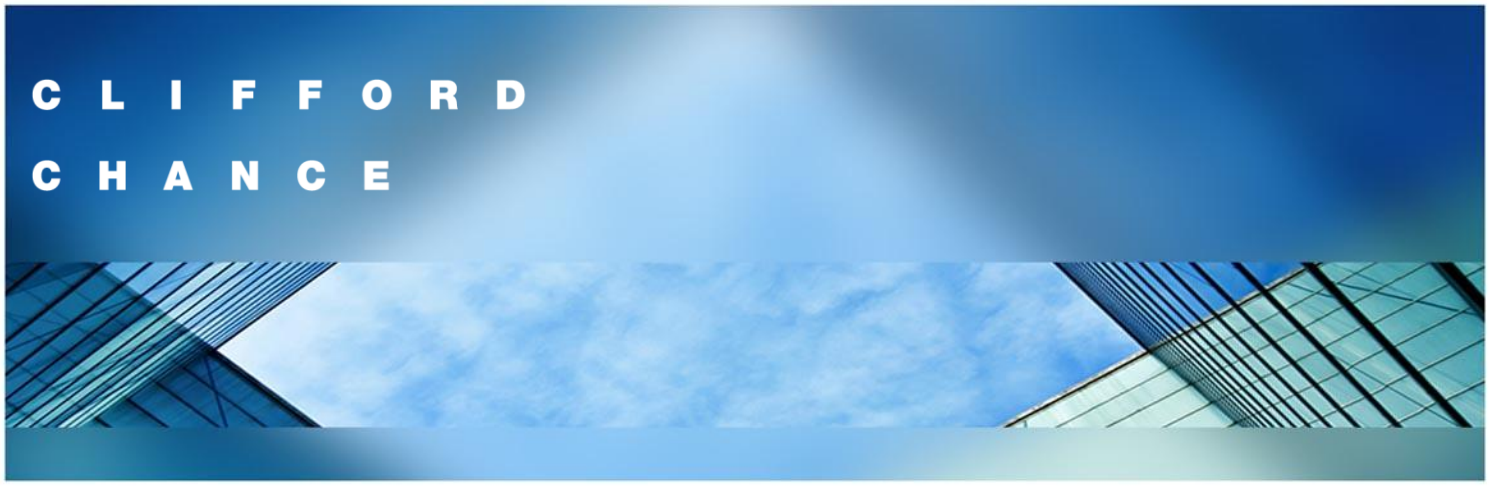

RECENT SEC ENFORCEMENT ACTIONS HIGHLIGHT ENFORCEMENT RISKS FOR INVESTMENT ADVISERS

On August 15, 2025, the SEC released its latest enforcement action against a registered investment adviser ("**RIA**").[1] This is the eighth action against an RIA since the start of President Trump's second administration and sheds further light on the new administration's enforcement priorities for RIAs. While this is a relatively small sample size, we believe that based on these matters, it is clear that the new administration is unlikely to shy away from enforcement actions involving RIAs where the potential claims relate to investor protection and the return of ill-gotten gains.

THE SEC'S MOST RECENT ENFORCEMENT ACTION: IN RE TZP MANAGEMENT ASSOCIATES, LLC

The SEC's most recent action focused on management fee calculation for an RIA's private fund clients. The allegations focused on the treatment of transaction fees and associated interest, and the allocation of those fees among multiple funds. The SEC found that, from October 2018 through November 2023, TZP Management Associates, LLC ("**TZP**") engaged in two practices that resulted in its funds paying over US$500,000 in excess management fees.

First, TZP entered into agreements with portfolio companies, which required the portfolio companies to pay Transaction Fees—including transaction, advisory, monitoring, and other fees—to TZP, which were offset against management fees. Under these agreements, portfolio companies could defer Transaction Fees, but TZP could charge interest on these deferred fees. Portfolio companies deferred these fees several times between October 2018 and November 2023, and as a result, TZP received over US$700,000 in interest payments. According to the settlement, when TZP received both the deferred Transaction Fees and the associated interest, it only offset the Transaction Fees and not the associated interest. As a result, the funds paid higher management fees than were required

[1] In the Matter of TZP Management Associates, LLC, File No. 3-22511 (Aug. 15, 2025), https://www.sec.gov/files/litigation/admin/2025/ia-6908.pdf.

by the agreements. According to the settlement, TZP did not adequately disclose to limited partners that it could collect interest on deferred Transaction Fees or that it would not include this interest in the fee offsets, thereby failing to disclose the resulting conflict of interest.

Second, for at least one portfolio company in which multiple funds invested, TZP improperly duplicated reductions when allocating Transaction Fees among the funds. Specifically, TZP first allocated Transaction Fees to each fund based on its *pro rata* share of total capital invested and then reduced each fund's allocation a second time based on its fully diluted equity ownership. This double reduction was inconsistent with the limited partnership agreements, resulting in lower fee offsets for the funds and increased the management fees TZP retained. TZP did not disclose this practice or the conflicts of interest it created to the relevant funds or their limited partners.

The SEC's order found that these actions violated Section 206(2) of the Investment Advisers Act ("**Advisers Act**"), which prohibits fraudulent or deceptive practices by investment advisers. Without admitting or denying the SEC's findings, TZP agreed to a censure, to cease and desist from further violations and to pay a total of US$683,877, consisting of US$502,041 in disgorgement, US$6,836 in prejudgment interest, and a US$175,000 civil monetary penalty ("**CMP**").

Notably, the ratio of disgorgement to civil penalties in this action, directing the bulk of the financial remedy to the affected investors, signals the SEC's focus on investor protection and remediation of harm, rather than purely punitive measures. This approach, coupled with the ongoing emphasis on undisclosed conflicts and improper fees, is a strong indication of the enforcement philosophy expected from the SEC under Paul Atkins' leadership.

OTHER RECENT ENFORCEMENT ACTIONS AGAINST RIAs

This most recent action is consistent with a line of enforcement actions directed at RIAs this year that focus on the miscalculation of fees and failure to disclose conflicts of interest.

As the first RIA enforcement action in the new administration, in February, the SEC settled charges against One Oak Capital Management, and its investment representative, for failing to adequately disclose advisory fees to elderly retail clients converting their brokerage accounts at an unaffiliated broker-dealer to advisory accounts at One Oak. According to the order, One Oak and the representative ignored their fiduciary duty, failed to adequately disclose that the account conversions would result in significantly higher fees for the clients and increased compensation for the representative, and did not disclose the resulting conflict of interest. The settlement also alleges that respondents failed to adequately consider whether the account conversions were in their clients' best interests to convert their accounts. As a result of this conduct, One Oak violated Advisers Act Sections 204, 206(2), and 206(4) and Rules 204-3 and 206(4)-7 thereunder. Without admitting or denying the SEC's findings, One Oak agreed to pay a US$150,000 civil monetary penalty and to retain an independent

compliance consultant to review certain policies and procedures related to its retail business.[2]

In March, the SEC again signaled that it was focused primarily on investor protection in its enforcement against Momentum Advisors LLC, its former managing partner Allan J. Boomer, and its former chief operating officer and partner Tiffany L. Hawkins. In that settlement, the SEC alleged that Boomer and Hawkins breached their fiduciary duties when they misused fund and portfolio company assets. According to the SEC's order, Hawkins misappropriated approximately US$223,000 from portfolio companies of a private fund she managed with Boomer and that was advised by Momentum Advisors. Hawkins concealed her misconduct and Boomer failed to reasonably supervise Hawkins despite red flags of her misappropriation. Boomer also caused the fund to pay a business debt that should have been paid by an entity he and Hawkins controlled, resulting in an unearned benefit to the entity of US$346,904. Finally, Momentum Advisors failed to adopt and implement adequate policies and procedures and to have the fund audited as required. As a result of this conduct, the SEC found that Momentum Advisors had violated Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-2 thereunder, and without admitting or denying the SEC's findings, Momentum Advisors agreed to a censure and to pay a US$235,000 civil monetary penalty, Boomer agreed to an US$80,000 civil monetary penalty and a twelve-month supervisory suspension.[3] In a separate action, without admitting or denying the SEC's findings, Hawkins agreed to a US$200,000 civil monetary penalty and an associational bar.[4]

Emphasizing the SEC's focus on protecting retail investors, in May, the SEC sued Andrew H. Jacobus, Kronus Financial Corporation, and RIA, Finser International Corporation, in the Southern District of Florida for misappropriating US$17.3 million from dozens of clients, including the elderly and Venezuelan Catholic dioceses, from 2015 to 2024. The SEC alleged that Jacobus used Finser and Kronus to misappropriate investor funds to make Ponzi-like payments to certain clients. Additionally, Jacobus provided clients with fake account statements and online balances, and promised specific returns and access to invested funds, none of which were true. Jacobus also diverted more than US$10 million from client brokerage accounts into Finser and Kronus-controlled accounts, and doctored account statements to conceal actual balances. By 2021, Jacobus stopped honoring client redemption requests, and in 2023, he stopped paying clients. As a result of this conduct, the SEC asserted that Jacobus, Finser, and Kronus violated Sections 206(1) and 206(2) of the Advisers Act, Section 17(a) of the Securities Act, and Section 10(b) of the Securities Exchange Act ("**Exchange Act**") and Rule 10b-5 thereunder. The SEC seeks permanent injunctions, disgorgement with prejudgment interest, and civil penalties against the defendants.[5]

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[2] In the Matter of One Oak Capital Management, LLC and Michael DeRosa, File No. 3-22453 (Feb. 14, 2025), https://www.sec.gov/files/litigation/admin/2025/34-102425.pdf. One Oak voluntarily refunded the fees at issue in the order and the SEC did not, accordingly, order disgorgement or prejudgment interest.

[3] In the Matter of Momentum Advisors, LLC and Allan J. Boomer, File No. 3-22460 (March 7, 2025), https://www.sec.gov/files/litigation/admin/2025/ia-6860.pdf. Prior to the order, the private fund was reimbursed and the SEC did not, accordingly, order disgorgement or prejudgment interest.

[4] In the Matter of Tiffany L. Hawkins, File No. 3-22461 (March 7, 2025).

[5] SEC v. Kronus Financial Corp. et al., No. 1:25-cv-22411 (S.D. Fla. May 28, 2025).

Similarly, in June, the SEC settled charges against RIA, North East Asset Management Group, Inc., and its principal, Gregory A. Zandlo, for defrauding advisory clients through an eighteen-month cherry-picking scheme in violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, and Sections 206(1) and 206(2) of the Advisers Act.[6] According to the order, the favored accounts profited approximately US$105,820, while the other client accounts lost approximately US$112,667. Without admitting or denying the SEC's findings, Zandlo and North East each consented to the entry of a cease-and-desist order; North East agreed to pay disgorgement of US$10,609 and prejudgment interest of US$2,260; and Zandlo agreed to pay disgorgement of US$80,559, prejudgment interest of US$17,172, and a US$141,000 civil monetary penalty. Zandlo also consented to an associational bar, and North East consented to a censure.[7]

Last month, the SEC brought an enforcement action against American Portfolio Advisors ("**APA**"), for failing to fully and fairly disclose the nature and extent of conflicts of interest arising from compensation arrangements between its affiliated broker-dealer and an unaffiliated clearing broker over a three-year period. The affiliated broker charged additional "markups" on various client fees, and the disclosures misleadingly suggested the clearing broker alone determined the fees. APA also overbilled certain clients by (1) charging advisory fees on alternative investments that should have been fee-exempt per client agreements, and (2) failing to refund prepaid advisory fees on terminated accounts, contrary to its own policies. Finally, APA's Chief Compliance Office admitted to creating and backdating documents submitted to the Staff for a compliance examination. As a result of its conduct, the SEC found that APA violated Sections 206(2) and 204(a) of the Advisers Act and Rule 204-2(a)(17)(ii) thereunder, and without admitting or denying the SEC's findings, APA agreed to a cease-and desist order, formal censure, and a US$1.75 million civil monetary penalty. The Staff also recognized APA's remedial efforts in reimbursing affected clients over US$5.3 million.[8]

THE SEC'S PRIORITIES AND KEY TAKEAWAYS

These actions signal the following enforcement priorities for RIAs under Paul Atkins' leadership:

- The SEC is targeting violations of the anti-fraud provisions of the Advisers Act, in particular the misappropriation of funds, improper calculation of fees, and the failure to disclose conflicts of interest.
- Unlike the prior administration, this administration does not appear to be focused on "technical" violations, such as the off-channel communications cases, or cases heavily predicated on 206(4)-7 compliance failures without significant investor harm.

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[6] Cherry-picking is the fraudulent practice of preferentially allocating profitable trades or failing to allocate unprofitable trades to an adviser's personal or favored accounts at the expense of the adviser's other client accounts.

[7] In the Matter of North East Asset Management Group and Gregory A. Zandlo, File No. 3-22481 (June 3, 2025), https://www.sec.gov/files/litigation/admin/2025/34-103173.pdf.

[8] In the Matter of American Portfolio Advisors, Inc., File No. 3-22488 (July 11, 2025), https://www.sec.gov/files/litigation/admin/2025/ia-6893.pdf.

- The SEC's focus is on protecting investors, particularly vulnerable investors like the elderly (e.g., One Oak or Kronus), and remedying harm, and not taking purely punitive measures.

Key Takeaways

RIAs should expect continued scrutiny of fee and expense practices, with particular attention to transparency, disclosure, and the fair treatment of investors.

For fund managers, this action underscores the importance of following contractual provisions regarding management fee offsets and expense allocations. Firms must establish robust internal controls to apply contractual provisions consistently and accurately, especially when managing multiple funds or complex fee structures. The case, and other recent enforcement actions, highlights the need for complete disclosure of all conflicts of interest, especially if the adviser exercises discretion over fees, interest charges, or expense allocations. Firms must fully communicate these practices to investors and disclose them in fund documentation.

To mitigate regulatory and reputational risks, fund managers should regularly review and update their fee and expense policies, disclosures, and internal controls to ensure compliance with both contract terms and regulatory standards. Finally, fund managers should also provide ongoing training for staff and timely communicate to investors any changes to fee or expense practices to maintain trust and meet legal obligations.

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