

SEC Charges Investment Adviser With Improperly Using Mutual Fund Assets to Pay Distribution Fees

First Case Brought Under Distribution-in-Guise Initiative

FOR IMMEDIATE RELEASE

2015-198

Washington D.C., Sept. 21, 2015 — The Securities and Exchange Commission today charged a New York-based investment adviser and its affiliated distributor with improperly using mutual fund assets to pay for the marketing and distribution of fund shares. First Eagle Investment Management and FEF Distributors agreed to pay nearly \$40 million to settle the SEC's charges, the first brought under a recent SEC initiative to protect mutual fund shareholders. The money will be returned to the accounts of affected shareholders.

An SEC investigation found that First Eagle and FEF unlawfully caused the First Eagle Funds to pay nearly \$25 million for distribution-related services, rather than making the payments out of the firms' own assets (known as "revenue sharing"). Such payments can only come from fund assets pursuant to a written Rule 12b-1 plan that is approved by a fund's board.

The case is the first arising out of a recent SEC initiative to protect mutual fund shareholders from bearing the costs when firms improperly use fund assets to pay for distribution-related services. Known as the Distribution-in-Guise Initiative, the SEC is seeking to determine whether some mutual fund advisers are improperly using fund assets to pay for distribution by masking the payments as sub-transfer agency (sub-TA) payments.

"First Eagle and FEF inappropriately used money belonging to the shareholders of the funds to pay for services clearly intended to market the funds and distribute their shares," said Andrew J. Ceresney, Director of the SEC's Enforcement Division. "Unless part of a 12b-1 plan, the firm should bear those costs, not the shareholders."

According to the SEC's order instituting a settled administrative proceeding:

- Financial intermediaries often provide both distribution and shareholder services to mutual funds. It is unlawful to use fund assets to pay for distribution and marketing, unless such payments are made pursuant to the fund's 12b-1 plan.
- FEF entered into agreements with two financial intermediaries for their distribution and marketing services. However, First Eagle and FEF treated the agreements as though they were for sub-TA services and improperly used the funds' assets to pay the intermediaries for distribution and marketing.
- The distribution services payments were in addition to payments made to these intermediaries pursuant to the funds' written 12b-1 plan.
- First Eagle inaccurately reported to the funds' boards that the distribution and marketing fees paid to the intermediaries were sub-TA fees.
- The funds' prospectus disclosures also inaccurately stated that FEF or its affiliates were bearing

distribution expenses not covered by the funds' Rule 12b-1 plan.

- The settlement relates to improper payments and disclosure failures that occurred from January 2008 to March 2014.

"Mutual fund advisers have a fiduciary duty to manage the conflict of interest associated with fund distribution, namely whether to use their own assets or to recommend to their fund's board to use the fund's assets to distribute shares," said Julie M. Riewe, Co-Chief of the SEC Enforcement Division's Asset Management Unit. "First Eagle breached that fiduciary duty by using the funds' assets rather than its own money to pay for distribution and failed to provide accurate information to the funds' boards."

The SEC's order finds that First Eagle willfully violated Section 206(2) of the Investment Advisers Act of 1940 and Section 34(b) of the Investment Company Act of 1940. First Eagle and FEF also caused the Funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1. Without admitting or denying the findings, First Eagle agreed to pay disgorgement of \$24,907,354 plus prejudgment interest of \$2,340,525 and a penalty of \$12.5 million. First Eagle and FEF agreed to cease and desist from further violations and FEF must retain an independent compliance consultant.

The SEC's investigation was conducted by the Enforcement Division's Asset Management Unit staff members Marie K. N. DeBonis and John Farinacci and the case was supervised by Anthony Kelly. The examination that led to the investigation was conducted by Renee Esfandiary, John Farinacci, Katherine Feld, Alicia Goldin, Jacob Krawitz, Lucas Tepper, Will Tong, Ragni Walker, and Seon Weems. The Distribution-in-Guise Initiative is a joint undertaking by staff in the Asset Management Unit, the Office of Compliance Inspections and Examinations, the Division of Investment Management, and the Division of Trading and Markets.

###

Related Materials

- [SEC order](#)