



CONSTELLATION
ADVISERS, LLC

**SEC MAY SOLICIT PAYMENTS (IN THE FORM OF CIVIL MONEY PENALTIES)
FROM ADVISERS WHO FAIL TO COMPLY WITH THE CASH SOLICITATION RULE**

The Office of Compliance Inspections and Examinations (“OCIE”) recently issued a Risk Alert identifying the most common deficiencies cited by the Staff related to the Cash Solicitation Rule (Rule 206(4)-3 of the Advisers Act). Under the Cash Solicitation Rule, registered advisers are generally prohibited from paying a cash fee, directly or indirectly, to solicitors, unless the arrangement complies with several conditions. The full text of the Risk Alert is available [here](#).

Most of the deficiencies related to arrangements with third-party solicitors. Under the Cash Solicitation Rule, if an adviser engages a third-party solicitor, the adviser must:

- execute a written **solicitation agreement** that describes the solicitation activities and compensation with a requirement that the solicitor provide a copy of the adviser’s brochure and a separate written **solicitor disclosure document** to the prospective client;
- receive from the client a signed and dated **client acknowledgment**; and
- make a **bona fide effort** to verify that the solicitor has complied with the solicitation agreement.

The most common deficiencies found by the OCIE Staff pertaining to the Cash Solicitation Rule were:

Solicitation Agreements

Advisers paying cash fees to solicitors without a solicitation agreement, or pursuant to solicitation agreements with the following shortcomings:

- no undertaking for solicitors to perform their duties consistent with the adviser’s instructions;
- no description of the solicitors’ duties or compensation; and
- solicitors not obligated to provide a copy of the adviser’s brochure or solicitor disclosure document.

Solicitor Disclosure Documents

Third-party solicitors not providing disclosure documents, or providing disclosure documents that failed to provide:

- disclosures regarding the nature of the relationship between the adviser and the solicitor;
- specific actual terms of the compensation arrangement between the adviser and the solicitor (instead using vague or hypothetical terms to describe the solicitor's compensation); and
- specific solicitation costs paid by the client in addition to the advisory fee.

Client Acknowledgements

Acknowledgements were untimely, undated, or dated after the client executed the investment advisory contract.

Bona Fide Efforts to Ascertain Solicitor Compliance

Advisers did not verify that third-party solicitors complied with solicitation agreements or were unable to describe their efforts to confirm solicitors complied with solicitation agreements.

TAKE ACTION!

Advisers Should:

- Confirm solicitation arrangements are in writing
- Verify solicitation agreements contain required elements
- Confirm contents and delivery of solicitor disclosure documents
- Verify timely receipt of client acknowledgments
- Execute a due diligence plan to validate solicitor compliance with agreements

Contact Constellation's Compliance professionals for assistance with incorporating these activities into your compliance program.

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