



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

July  
Mark  
David Miller

September 1, 2005

The Honorable George Miller  
Senior Democratic Member  
Education and the Workforce Committee  
U.S. House of Representatives  
2101 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Edward J. Markey  
U.S. House of Representatives  
2108 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressmen Miller and Markey:

Thank you for your August 15, 2005 letter to Department of Labor Secretary Chao and me. In your letter, you request information from the SEC concerning the May 2005 SEC "*Staff Report Concerning Examinations of Select Pension Consultants*." This report summarized findings from the SEC staff's examinations of 24 pension consultants and noted that, as fiduciaries, investment advisers owe their clients a duty of full and fair disclosure of all material facts, including any material conflicts of interest. The report noted that some pension consulting firms may provide services to both pension plan clients and to money managers. As a result, the report urged pension consulting firms to enhance their compliance policies and procedures to ensure that the adviser is fulfilling its fiduciary duties to its clients. The report stated that such policies and procedures might include, for example: policies to ensure that the firm's advisory activities are insulated from its other business activities to eliminate or mitigate conflicts of interest in its advisory activities; policies to ensure that all disclosures required to fulfill fiduciary obligations are provided to prospective and existing advisory clients; and policies to prevent conflicts of interest or disclose material conflicts of interest. The report was made public in order to alert all pension consultants to these issues and to urge that pension consulting firms take steps to address them.

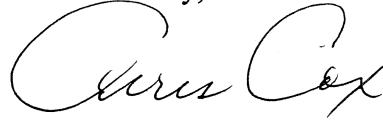
In addition, the SEC and the Department of Labor are taking steps to assist plan trustees in understanding these issues. On June 1, 2005, the two agencies together released guidance designed to assist fiduciaries of employment benefit plans in reviewing conflicts of interest of pension consultants: "*Selecting and Monitoring Pension Consultants: Tips for Plan Fiduciaries*" (SEC 2005-81). A copy is enclosed. The guidance includes a set of questions that plan fiduciaries can ask existing or prospective pension consultants to assist them in evaluating the objectivity of the recommendations provided, or to be provided, by the consultant. The goals of the guidance are to encourage the disclosure and review of more and better information about potential conflicts of interest and to help plan fiduciaries exercise informed decisions on behalf of plan investors.

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In your letter, you request any and all documents that provided support for the findings in the report. The report summarizes the findings from individual examinations, which are not public. As I am sure you can understand, the Commission is sensitive to the possibility that disclosure of such information could unduly prejudice the subject of an examination, or otherwise undermine the effectiveness of the Commission's examination program. However, if you or your staff have any questions, or would like a briefing on the issues in the report, please contact me or have your staff contact Jane Cobb, Director of Legislative Affairs, who may be reached at 202-551-2010.

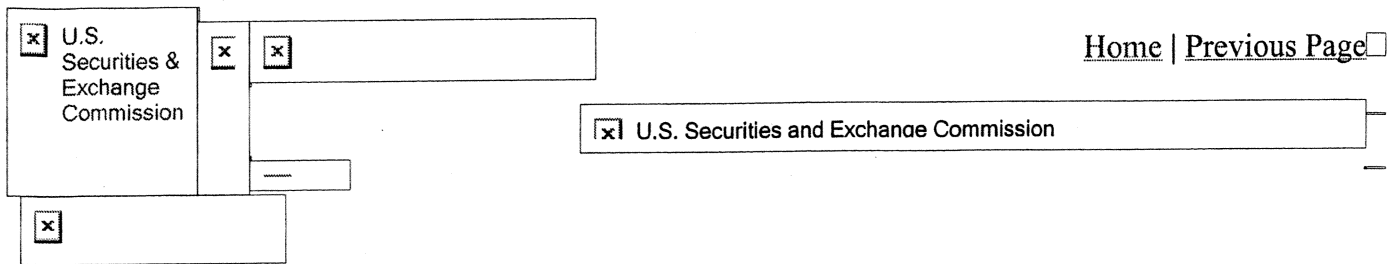
Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Cox".

Christopher Cox  
Chairman

Enclosure



# U.S. Department of Labor and Securities and Exchange Commission Issue Guidance Addressing Potential Conflicts of Interest of Pension Consultants

**FOR IMMEDIATE RELEASE  
2005-81**

*Washington, D.C., June 1, 2005* — The U.S. Department of Labor and the Securities and Exchange Commission (SEC) today published tips to assist fiduciaries of employee benefit plans in reviewing conflicts of interest of pension consultants.

"The tips we are releasing today will help plan fiduciaries evaluate the objectivity of advice and recommendations furnished by their pension consultants," said Ann L. Combs, assistant secretary of labor for the Employee Benefits Security Administration.

"Fiduciaries must be provided the information necessary to ensure that advice is objective and not influenced by revenue sharing and other arrangements pension consultants may have with other service providers."

The guidance, "Selecting and Monitoring Pension Consultants – Tips for Plan Fiduciaries," addresses questions raised by an SEC staff report on potential conflict of interest disclosures by pension consultants. The report by the SEC Office of Compliance Inspections and Examinations indicates that those potential conflicts of interest may affect the objectivity of the advice they are providing to their pension plan clients.

"These questions should help plan trustees navigate among the many choices in pension consultants and make informed choices that are beneficial to plan participants," said Susan F. Wyderko, Director of the SEC Office of Investor Education and Assistance.

The tips provide relevant questions plans fiduciaries should ask to encourage better disclosure and information relating to potential areas of conflicts of interest by pension consultants. The tips are available on the websites of the EBSA at <http://www.sec.gov/cgi-bin/goodbye.cgi?www.dol.gov/ebsa> or the SEC at [www.sec.gov/investor/pubs/sponsortips.htm](http://www.sec.gov/investor/pubs/sponsortips.htm).

<http://www.sec.gov/news/press/2005-81.htm>

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U.S. Securities and Exchange Commission

## Selecting and Monitoring Pension Consultants: Tips for Plan Fiduciaries

The Employee Retirement Income Security Act (ERISA) requires that fiduciaries of employee benefit plans administer and manage their plans prudently and in the interest of the plan's participants and beneficiaries. In carrying out these responsibilities, plan fiduciaries often rely heavily on pension consultants and other professionals for help. Findings included in a report by the staff of the U.S. Securities and Exchange Commission released in May 2005, however, raise serious questions concerning whether some pension consultants are fully disclosing potential conflicts of interest that may affect the objectivity of the advice they are providing to their pension plan clients.

Under the Investment Advisers Act of 1940 (Advisers Act), an investment adviser providing consulting services has a fiduciary duty to provide disinterested advice and disclose any material conflicts of interest to their clients. In this context, SEC staff examined the practices of advisers that provide pension consulting services to plan sponsors and trustees. These consulting services included assisting in determining the plan's investment objectives and restrictions, allocating plan assets, selecting money managers, choosing mutual fund options, tracking investment performance, and selecting other service providers. Many of the consultants also offered, directly or through an affiliate or subsidiary, products and services to money managers. Additionally, many of the consultants also offered, directly or through an affiliate or subsidiary, brokerage and money management services, often marketed to plans as a package of "bundled" services. The SEC examination staff concluded in its report that the business alliances among pension consultants and money managers can give rise to serious potential conflicts of interest under the Advisers Act that need to be monitored and disclosed to plan fiduciaries.

To encourage the disclosure and review of more and better information about potential conflicts of interest, the Department of Labor and the SEC have developed the following set of questions to assist plan fiduciaries in evaluating the objectivity of the recommendations provided, or to be provided, by a pension consultant.

1. Are you registered with the SEC or a state securities regulator as an investment adviser? If so, have you provided me with all the disclosures required under those laws (including Part II of Form ADV)?

You can check yourself — and view Part I of the firm's Form ADV —

by searching the SEC's Investment Adviser Public Disclosure website. Your investment adviser must furnish you with a copy of Part II of Form ADV. At present, the IAPD database contains Forms ADV only for investment adviser firms that register electronically using the Investment Adviser Registration Depository. In the future, the database will expand to encompass all registered investment advisers—individuals as well as firms—in every state. If you can't locate an investment adviser in IAPD, be sure to contact your state securities regulator or the SEC's Public Reference Branch.

2. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, describe those relationships?

When pension consultants have alliances or financial or other relationships with money managers or other service providers, the potential for material conflicts of interest increases, depending on the extent of the relationships. Knowing what relationships, if any, your pension consultant has with money managers may help you assess the objectivity of the advice the consultant provides.

3. Do you or a related company receive any payments from money managers you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, what is the extent of these payments in relation to your other income (revenue)?

Payments from money managers to pension consultants could create material conflicts of interests. You may wish to assess the extent of potential conflicts.

4. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients?

Probing how the consultant addresses these potential conflicts may help you determine whether the consultant is right for your plan.

5. If you allow plans to pay your consulting fees using the plan's brokerage commissions, do you monitor the amount of commissions paid and alert plans when consulting fees have been paid in full? If not, how can a plan make sure it does not over-pay its consulting fees?

You may wish to avoid any payment arrangements that could cause the plan to pay more than it should in pension consultant fees.

6. If you allow plans to pay your consulting fees using the plan's brokerage commissions, what steps do you take to ensure that the plan receives best execution for its securities trades?

Where and how brokerage orders are executed can impact the overall costs of the transaction, including the price the plan pays for the securities it purchases.

7. Do you have any arrangements with broker-dealers under which you or a related company will benefit if money managers place trades for their clients with such broker-dealers?

As noted above, you may wish to explore the consultant's relationships with other service providers to weigh the extent of any potential conflicts of interest.

8. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the plan while providing the consulting services we are seeking?

All investment advisers (whether registered with the SEC or not) owe their advisory clients a fiduciary duty. Among other things, this means that advisers must disclose to their clients information about material conflicts of interest.

9. Do you consider yourself a fiduciary under ERISA with respect to the recommendations you provide the plan?

If the consultant is a fiduciary under ERISA and receives fees from third parties as a result of their recommendations, a prohibited transaction under ERISA occurs unless the fees are used for the benefit of the plan (e.g., offset against the consulting fees charged the plan) or there is a relevant statutory or class exemption permitting the receipt of such fees.

10. What percentage of your plan clients utilize money managers, investment funds, brokerage services or other service providers from whom you receive fees?

The answer may help in evaluating the objectivity of the recommendations or the fiduciary status of the consultant under ERISA.

For more information on the SEC staff's findings, please read [Staff Report Concerning Examinations of Select Pension Consultants](#). Plan trustees, pension consultants, and other service providers can learn about their fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA) by visiting the website of the [Department of Labor](#). Pension consultants who have questions concerning their obligations under the Investment Advisers Act of 1940 should either consult with an attorney who specializes in the federal securities laws or contact the staff of the SEC's [Division of Investment Management](#).

<http://www.sec.gov/investor/pubs/sponsortips.htm>

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