

10/25/2005

General Comment:Comments regarding SEC Release No. 34-52635: File No. S7-09-05

Interpretive Release regarding SEC sec 28(e)

The proposed interpretations offer substantial clarity for the past. Unfortunately, I don't believe they go far enough. While there is clarity about certain areas one specific area that is not addressed is the practice that certain funds have employed to allow them to use Soft \$ monies to pay for items that may be questionable.. This has been accomplished by modifying the Fund operating agreement to allow the Advisor to use the Funds assets to pay for these expenses. This practice has the affect of increasing the management fee and is clearly detrimental to the investors.

This release while clearly disallowing membership dues and professional licensing fees, office rent, utilities, phone, carpeting, marketing, entertainment, meals, copiers, office supplies, fax machines, couriers, backup generators, electronic proxy voting services, salaries, and legal and travel expenses. The rule change has not addressed equipment maintenance and repair services, although you have disallowed computer hardware. Further, you do not address the practice of funds altering their operating agreements to broaden the scope of allowable items. If nothing is done some Advisors will continue this practice which will create conflict between Advisors and broker. If the Broker argues that the expense is disallowed, but the Advisor argues that the expense is allowed because it is disclosed, there is still a fairly severe conflict. It puts the broker in the position of disagreeing with the client and risking the loss of business. Every time I disagree with a client about what is deductible and what is not I am always showered with names of Brokers who do what I am unwilling to do. By not specifically closing this loop hole, you perpetuate the problem.

More is better in this case. The more detailed the allowed list and the disallowed list the easier it will be for the industry to self police itself and be successful.

Thank you

Bernard Notas