Equitable Financial to Pay $50 Million to Settle SEC's Fraud Charges

The Securities and Exchange Commission has charged Equitable Financial Life Insurance Company with fraud after the company allegedly provided account statements to roughly 1.4 million variable annuity investors that included misleading statements and omissions concerning investor fees.

Equitable agreed to pay $50 million to harmed investors, mostly public school teachers and staff members, to settle the charges.

According to the SEC, since at least 2016, Equitable gave investors the false impression that their quarterly account statements listed all fees paid during the period. The SEC's investigation found that the statements only listed certain types of fees that investors infrequently incurred, and that more often than not, the statements had $0.00 listed for fees.

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"When considering how to invest their hard-earned money and save for retirement, it is essential that investors not be misled about the fees they are paying," said Gurbir S. Grewal, director of the SEC's division of enforcement. "This case should serve as an important reminder to investment firms to carefully review their statements to ensure fee information is disclosed properly."

The SEC's order finds that Equitable violated the antifraud provisions of the Securities Act of 1933. Without admitting or denying the findings, Equitable agreed to cease and desist from committing future violations and to pay a $50 million civil penalty that it will distribute to affected investors. Equitable also agreed to revise how it presents fee information in its variable annuity account statements.

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Schwab Subsidiaries to Pay $187 Million for Misleading Robo-Adviser Clients

The Securities and Exchange Commission has charged three Charles Schwab investment adviser subsidiaries for making "false and misleading statements" about the cash component of their robo-adviser service, Schwab Intelligent Portfolios, and failed to disclose that they were allocating client funds in a manner that their own internal analyses showed would be less profitable for their clients under most market conditions.

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According to the SEC, Schwab's robo-adviser portfolios kept between 6 percent and 29.4 percent of clients' assets in cash. The amount of cash was pre-set so that Schwab's' affiliated bank would earn at least a minimum amount of revenue from the spread on the cash by loaning out the money.

Schwab did not disclose that, under market conditions where other assets such as equities outperform cash, the cash allocations in the investors' portfolios would lower clients' returns by approximately the same amount as an advisory fee would have.

According to the SEC, from March 2015 through November 2018, Schwab's mandated disclosures for its robo-adviser stated that the amount of cash in the portfolios was determined through a "disciplined portfolio construction methodology," and that the robo-adviser would seek "optimal return[s]."

Schwab's own data showed that under most market conditions, the cash in the portfolios would cause clients to make less money while taking on the same amount of risk, the regulator said. Schwab advertised the robo-adviser as having neither advisory nor hidden fees, but didn't tell clients about this cash drag on their investment, the SEC said.

The SEC alleges that Schwab made money from the cash allocations by sweeping the cash to its affiliate bank, loaning it out, and then keeping the difference between the interest it earned on the loans and what it paid in interest to the robo-adviser clients.

"Schwab claimed that the amount of cash in its robo-adviser portfolios was decided by sophisticated economic algorithms meant to optimize its clients' returns when in reality it was decided by how much money the company wanted to make," said Gurbir S. Grewal, director of the SEC's Division of Enforcement. "Schwab's conduct was egregious and [the] action sends a clear message to advisers that they need to be transparent with clients about hidden fees and how such fees affect clients' returns."

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Without admitting or denying the SEC's findings, Schwab's investment adviser subsidiaries, Charles Schwab & Co. Inc., Charles Schwab Investment Advisory Inc., and Schwab Wealth Investment Advisory Inc., agreed to a cease-and-desist order, a censure, and to pay approximately $52 million in disgorgement and prejudgment interest, and a $135 million civil penalty.

Schwab agreed to "cooperate fully" with the SEC and will retain an independent consultant to review its policies and procedures relating to their robo-adviser's disclosures, advertising, and marketing.

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SEC Charges RIAs and Broker-Dealers over Improper ETP Sales

The Securities and Exchange Commission has filed settled actions against three investment advisory firms and two dually-registered broker-dealer and advisory firms for violations related to unsuitable sales of complex exchange-traded products to retail investors. The sales occurred between January 2016 and April 2020.

The charged firms include Royal Alliance Associates Inc., Securities America Advisors Inc., Summit Financial Group Inc., American Portfolios Financial Services/American Portfolios Advisors Inc., and Benjamin F. Edwards & Company Inc., which agreed to return more than $3 million to harmed investors.

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The SEC's five actions concern sales of volatility-linked exchange-traded products and are the first stemming from investigations conducted by the division of enforcement's exchange-traded products initiative, which utilized trading data analytics to uncover potential unsuitable sales.

The SEC claims that value of the products attempted to track short-term volatility expectations in the market, typically measured against derivatives of the Chicago Board Options Exchange volatility index. The offering documents made clear that the short-term nature of these products made investments more likely to experience a decline in value when held over a longer period.

The SEC indicated that, contrary to these warnings, and without understanding the products, representatives of the

firms recommended their customers and clients buy and hold the products for longer periods, including in some circumstances, for months and years. The SEC also claim that the firms failed to adopt or implement policies and procedures regarding suitability and volatility-linked exchange-traded products.

"It is important for firms to put the appropriate protections in place to ensure complex products are properly evaluated and understood by their representatives. Failing to do so puts investors at risk," said Stephanie Avakian, director of the SEC's division of enforcement. "We take these failures seriously, and we will continue to look for sales that expose customers to unsuitable investments."

The SEC alleges that each of the firms failed to implement written policies and procedures reasonably designed to prevent violations of the Investment Advisers Act and its rules, while American Portfolios and Benjamin Edwards are also accused of failing to reasonably supervise certain representatives who recommended their customers buy and hold such products.

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Without admitting or denying the findings, each firm agreed to cease and desist from future violations, a censure, and to pay disgorgement and prejudgment interest.

American Portfolios and Benjamin Edwards each agreed to pay a civil penalty of $650,000, Securities America and Summit each agreed to pay a civil penalty of $600,000 and Royal Alliance agreed to pay a civil penalty of $500,000.

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