

## >>>FAIRVIEW FLASH REPORT<<<

### SEC Hot Topic: Compensation Received by Fund Advisory Personnel

<b>WHAT IS HAPPENING?</b>	<p>The SEC released guidance in February 2015, reminding “mutual fund industry participants” that Section 17(e)(1) of the 1940 Act (“Advisers Act”) should be addressed expressly in funds’ compliance policies and procedures. Since then, the topic has also been a common SEC exam question for mutual fund advisers and sub-advisers.</p>
<b>WHAT DOES 17(e)(1) PROHIBIT?</b>	<p>Section 17(e)(1) prohibits a registered investment company and its affiliated persons from accepting <i>any</i> compensation “for the purchase or sale of property to or for the fund” unless the compensation is (1) regular salary from the fund; or (2) compensation for serving as underwriter or broker to the fund.</p> <p>It is important to note that compensation includes a wide range of economic benefits, from gifts and entertainment to additional compensation for services that are part of a fund manager’s regular responsibilities, such as credit monitoring. Compensation that falls outside of the two limited exceptions will be subject to scrutiny and may be found to violate 17(e)(1) regardless of: (1) the amount of compensation; (2) whether there was intent to influence; or (3) whether the fund actually suffered economic harm. Once a conflict of interest is established, the burden shifts to the party in conflict.</p>
<b>NEXT STEPS</b>	<p>Fairview encourages all mutual fund advisers and sub-advisers to update their policies and procedures to specifically address 17(e)(1) and will assist you with determining the appropriate update which may include a prohibition on the giving or receipt of compensation, outside of the two exceptions above.</p> <p>However, in some cases, if the firm is able to ensure certain gifts and entertainment will not trigger 17(e)(1), other measures may be more appropriate.</p>

Source: [SEC Guidance, February 2015](#)