

Reg. of Investment Advisers § 1:4

Regulation of Investment Advisers
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Chapter I. Registration of Investment Advisers

§ 1:4. Who must register?—The investment adviser definition: Section 202(a)(11)—Compensation

The term “compensation” in the investment adviser definition is interpreted to include virtually any form of economic benefit that a person receives, including an advisory fee, a commission, or any combination thereof, for providing advisory services. The SEC staff also construes this term to include indirect economic or other benefits that generally may not be considered compensation, such as fees or benefits received from sources other than the recipient of the advice. For example, if an adviser receives a commission from a third party for the sale of an investment product to a client, that commission may satisfy the compensation requirement even though it was paid to the adviser only indirectly by the client (i.e., as part of the product’s price).¹ Similarly, the staff believes that the compensation element of the definition does not require a *separate* fee for advisory services.² Thus, if the adviser is paid or receives a single fee or remuneration for providing more than one type of service to clients, compensation may be found if investment advisory services are a component of the services provided.³ A payment “at cost” also satisfies the compensation element.⁴ However, the staff has determined that intangible benefits—such as the ability to attract and retain employees—would not likely constitute compensation.⁵

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Footnotes

- ¹ See Warren H. Livingston, SEC No-Action Letter (pub. avail. Mar. 8, 1980).
- ² See FINESCO, SEC No-Action Letter, 1979 WL 13190 (Dec. 11, 1979).
- ³ See Investment Advisers Act Release No. 1092, 1987 WL 112702 (Oct. 8, 1987).
- ⁴ See Chimorel Servs., Inc., SEC No-Action Letter (pub. avail. June 6, 1982).
- ⁵ See Letter to Olena Berg, Assistant Secretary, DOL Pension and Welfare Benefits Admin., from Jack W. Murphy, Associate Director, SEC Division of Investment Mgmt. (Dec. 5, 1995).