

Oregon Department of Consumer and Business Services Division of Financial Regulation, Bulletin No. DFR 2025-

350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405

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dfr.oregon.gov

TO: All Oregon State Investment Advisers and Investment Adviser Representatives

DATE: [DATE]

RE: State Investment Advisers May Not Charge a Fee Solely for Availability

I. Purpose

This bulletin provides guidance to Oregon State Investment Advisers (Advisers) and their Investment Adviser Representatives (Representatives)¹ regarding what constitutes an “unreasonable advisory fee” under Oregon Administrative Rule (OAR) 441-205-0145. Specifically, the Oregon Division of Financial Regulation considers fees charged solely to guarantee an Adviser or their Representative’s availability, but which are unrelated to any rendered advisory services, to be unreasonable.

II. Authority

ORS 59.205(2)

OAR 441-205-0145

III. Background

Oregon Revised Statute (ORS) 59.205(2) gives the director of the Department of Consumer and Business Services authority to issue an order suspending, revoking, or conditioning the license of an Adviser or Representative if the licensee “has engaged in...unethical practices or conduct in connection with the purchase or sale of any security.”

OAR 441-205-0145 notes that Advisers and Representatives have a fiduciary duty to act primarily for the benefit of their clients. That rule also describes conduct that constitutes “unethical business practices” under 59.205(2). Among the enumerated prohibited practices is “charging a client an unreasonable advisory fee.”²

IV. Guidance

Every client’s unique circumstances necessitates individualized evaluations of how Advisers and Representatives are compensated for their services. Generally, what is

¹ Adviser and Representative are defined in ORS 59.015(20) and (8) respectively.

² OAR 441-205-0145(j).

“reasonable” depends on whether the fee is commensurate with the services rendered by the adviser. The division considers fees charged solely to guarantee an Adviser or their Representative’s availability, but which are unrelated to any rendered advisory services, to be unreasonable.³

Note that charging a fee for availability is unreasonable regardless of the fee model or label used. In the past the division and other states have seen fees labeled “retainers,” “ongoing financial planning fees,” and “subscription fees” run afoul of the necessity to charge a fee commensurate with the services rendered.⁴ In all cases the division will look beyond the label to determine reasonableness.

This bulletin is effective upon issuance.

TK Keen, Administrator
Interim Insurance Commissioner
Division of Financial Regulation
Department of Consumer and Business Services

Date

³ Likewise, charging a fee without providing any services is a breach of the Adviser or Representative’s fiduciary duty. See, e.g., In the Matter of Regal Inv. Advisors LLC, et al., Release No. 5865 (U.S. Securities and Exchange Commission, Sept. 16, 2021).

⁴ See, e.g., Utah Division of Securities (2009), *Retainer Fee Standards*, at https://securities.utah.gov/wp-content/uploads/2021/09/papers_Retainer_Fees.pdf.