

AUGUST 17, 2016

# Milne Legal Press Release

## *“Wrap Fees and Foreign Currency Exchange Markups” - SEC Finds Insufficient Disclosure on Both -*

### Introduction

Milne Legal encourages every registered investment adviser with the Securities and Exchange Commission (“SEC”) to be aware of two SEC enforcement actions announced in July 2016. Advisers should review these regulatory proceedings so they can ensure that their compliance programs and public disclosures adequately address the regulatory concerns the SEC highlighted.

### I. RiverFront Investment Group

The first enforcement action was brought against an SEC registered investment adviser RiverFront Investment Group (“RiverFront”) for charging clients additional fees that were outside its wrap fee. The SEC found that while RiverFront disclosed to investors that client trades were typically executed through the sponsoring broker (so the wrap fee would cover the transaction costs) in practice it executed the majority of its wrap program trading through other brokers resulting in additional costs to clients for those transactions. RiverFront’s FormsADV did not adequately address these additional costs, nor the frequency by which the additional costs occurred, and were, therefore, determined by the SEC to be insufficient and materially misleading.

Sharon Binger, Director of the SEC’s Philadelphia Regional Office, stated the following:

*“Investors were misled about the overall cost of selecting RiverFront to manage their portfolios. Investors in wrap fee programs pay one annual fee for bundled services without expecting to pay more, so if subadvisers like RiverFront trade in a way that incurs additional costs to clients, those costs must be fully and clearly disclosed upfront so investors can make informed investment decisions.”*

The SEC’s order against RiverFront concluded that the firm violated Sections 207 (for making an untrue statement of a material fact) and 204 of the Investment Advisers Act of 1940 and Rule 204-1(a) (for not amending Form ADV when it becomes inaccurate). The SEC’s proceeding against RiverFront can be found at: <https://www.sec.gov/litigation/admin/2016/ia-4453.pdf>

## II. State Street Bank and Trust Company

The second enforcement action was brought against State Street Bank and Trust Company (“State Street”) for misleading its clients about its foreign currency exchange markups, telling some clients that it guaranteed the most competitive rates available on their foreign currency exchange trades, provided best execution, or charged market rates on the transactions. Instead, the SEC investigation found that State Street set prices largely driven by predetermined, uniform markups and made no effort to obtain the best possible prices for these clients.

Andrew J. Ceresney, Director of the SEC’s Division of Enforcement, stated the following: *“State Street misled custody clients about how it priced their trades and tucked its hidden markups into a corner where they were unlikely to notice.”*

State Street agreed to settle the case for USD 382.4 million. The SEC’s Press Release describing the settlement can be found at: <https://www.sec.gov/news/pressrelease/2016-152.html>

### Milne Legal’s Reaction



**Dustin W. Milne**  
Managing Partner

*“Inadequate public disclosure is at the center of both of these recent SEC enforcement actions.*

*Milne Legal encourages all investment advisers to review their Form ADV disclosures (and other marketing materials) to ensure that their advisory fees, and any additional charges, are sufficiently disclosed.*

*Investment advisers should also have clear and adequate disclosure, and seek best execution, on the foreign exchange markups charged by the client’s custodian. The objective is to ensure that advisory clients are not misled and have all necessary information in advance of making any investment decision.”*

If you have any questions regarding either of the SEC enforcement actions discussed herein, please contact Milne Legal.

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