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FOR IMMEDIATE RELEASE

Press Guide to

SEC's "Staff Report Concerning Examinations of Select Pension Consultants"

Pittsburgh, PA, May 17, 2005—The Foundation for Fiduciary Studies has prepared the following response to assist members of the press and others in understanding the issues associated with the SEC report on pension consultants.

Summary: The SEC determined that thirteen of the twenty-four pension consulting firms it examined had ongoing conflicts of interests, and six had one-time-only or very limited conflicts.

> **Foundation comment:** The SEC staff has done an excellent job of uncovering a number of significant deficiencies in the investment consulting profession, particularly the conflicts of interests that exist between certain consultants and the very same money managers the consultant has been hired to monitor and evaluate. Such conflicts have a negative impact on the performance of investment portfolios and further erode the public's confidence in the investment industry.

[The complete SEC report is appended to this Guide.]

The results of the SEC's seventeen-month examination into the pension/investment consulting industry were released on May 16, 2005. The comprehensive examination was conducted by the SEC's Office of Compliance, Inspections and Examinations. From the SEC Website:

> "The Office of Compliance Inspections and Examinations administers the SEC's nationwide examination and inspection program for registered self-regulatory organizations, broker-dealers, transfer agents, clearing agencies, investment companies, and investment advisers. The Office conducts inspections to foster compliance with the securities laws, to detect violations of the law, and to keep the Commission informed of developments in the regulated community. …**Violations that appear too serious for informal correction are referred to the Division of Enforcement.**" [emphasis added by the Foundation]

Foundation comment: We've grown accustomed to "Spitzer speed": The New York Attorney General announces an investigation into an apparent fiduciary breach, and within hours heads roll, organizations are realigned, and a settlement is reached. Federal regulators operate at a more deliberate pace, and various duties and responsibilities are delegated across different Offices/ Divisions.

The SEC examined a cross-section sampling of twenty-four pension/investment consulting firms (out of a possible universe of 1,742 firms registered with the SEC)—ranging in size from the very largest to small, one-person firms.

Foundation comment: There are far more than 1,742 firms providing investment consulting services to pensions. This examination only looked at those firms registered with the SEC. There are, at least, four other ways an investment consulting firm could be registered:

1. At the state level if the investment consultant does not meet the requirements to register at the federal level;
2. By the NASD or the NYSE, and the SEC, if the investment consultant is a broker-consultant;
3. By the OCC, if the investment consultant is part of a national banking institution; or
4. By state Insurance Commissioners if the investment consultant is representing the services of an insurance company.

Foundation comment: This examination underscores the need to have all pension and investment consultants (and persons using like-sounding terms: wealth manager, financial advisor, estate planner, financial consultant, and private banker) to be required to register under one regulatory scheme. How else can a critical profession, such as investment consulting, be properly regulated?

The SEC noted the following:

1. More than half of the pension consultants or affiliates reviewed (13) provided products and services to both pension plan advisory clients and money managers, as well as mutual funds, on an ongoing basis.

Foundation comment: The SEC in its release did not go so far as to say that pension/investment consulting firms should divest themselves of conflicting activities, but the message is clear. Most major investment consulting firms that formerly provided such services already have ceased these activities.

2. A majority of the pension consultants examined (14, or 58 percent) have affiliated broker-dealers or relationships with unaffiliated broker-dealers.

   Foundation comment: As previously stated, the examination underscores the need to have all pension/investment consultants, including broker-consultants, to be registered under one regulatory scheme.

3. The SEC could not fully analyze whether pension consultants "skewed" their recommendations to favor certain money managers.

   Foundation comment: The SEC examined records from the sampled pension/investment consulting firms for the period January 1, 2002 to November 30, 2003. To measure the full negative impact a consultant's "pay-to-play" schemes has on investment performance (in both the manager selection and monitoring phases) a person may need to examine as much as ten years of data. Current SEC regulations require investment consultants to maintain records for only five years. We believe the regulations need to be changed to expand required record-keeping periods to ten years. In the meantime, pension trustees should be advised to require their investment consultants and money managers to maintain all investment-related records for the duration of the client relationship plus an additional five years after the relationship is terminated. In addition, trustees should insist that copies of all investment-related records be provided upon demand. (Certain investment services firms have begun to include clauses in their contracts that their records are the confidential property of the financial services firms, making it difficult for trustees and regulators to obtain information as to whether the financial services firm is properly executing its fiduciary duties.)

4. Many pension consultants have affiliates that also provide services to pension plan clients. These relationships create disclosure and conflict of interest issues that have not been addressed by pension consultants.

5. Of the nineteen consultants or their affiliates that provided products/services to money managers, three (or 16 percent) provided no disclosure of these other services, and sixteen (or 84 percent) provided limited disclosure.

   Foundation comment: Investment consultants are required to disclose such conflicts in SEC Form ADV Part II—the same form is used by both money managers and investment consultants. It is highly recommended that the SEC create a new form exclusively for pension/investment consultants, so that the unique attributes of the consultant's services can be more clearly disclosed.

6. Many pension consultants do not consider themselves to be fiduciaries to their clients.

    Foundation comment: Investment consultants, by their very function, are fiduciaries and, therefore, are required to avoid conflicts of interest and to disclose unavoidable conflicts. Yet certain investment consulting firms have built their businesses around conflicts of interest, as long as they make a minimal disclosure to clients. From the SEC report:

    > *"Investment advisers owe their advisory clients a fiduciary duty. The Advisers Act 'reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as* ***a congressional intent to eliminate, or at least expose, all conflicts of interest*** [emphasis added] *which might incline an investment adviser —consciously or unconsciously—to render advice which was not disinterested.'"*

7. Many pension consultants did not maintain policies and procedures that were tailored to the nature of their business.

    Foundation comment: There is nothing new here, and that's not a criticism of the SEC, but rather of the consultants, themselves. Consultants have had years to put their houses in order; to draft policies and procedures to prevent such conflicts. Certain consultants have chosen to ignore the warnings.

In addition, the SEC examined several money managers to view the consultants from the vantage point of the money manager, and found that:

> Money managers appear to have relationships with multiple consultants and purchase overlapping "services" from more than one consultant. In such cases, the money managers appear not to have disclosed the potential conflict of interest to their clients.
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> **Foundation comment:** The disclosure by money managers of the potential conflict of interest probably will be one of the best deterrents to the continuance of "pay-to-play" schemes. Money managers are a better line of defense against "pay-to-play" practices than trustees. Many money managers resent the pressure put on them by certain consultants to purchase "services." Now, with this report, money managers will be empowered to "Just say no."

Foundation comment: This is not the first time regulators have examined conflicts of interest within the investment consulting industry. In 1998, both the SEC and the DOL's ERISA Advisory Council reported finding numerous instances of abuse and conflicts. The SEC released its *"Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds."* (September 22, 1998) Selected quotes include:

> "Under traditional fiduciary principles, a fiduciary cannot use assets entrusted by clients to benefit itself."

"All advisers have an obligation to act in the best interests of their clients and to place client interests before their own. They also have an affirmative duty of full and fair disclosure of all material facts to their clients. These fiduciary duties are enforceable under the antifraud provisions of Sections 206 and 207 of the Advisers Act and Section 10(b) and Rule 10b-5 under the Exchange Act."

"Advisers that we examined have directed millions of dollars in commissions to purchase third-party performance measurement services … While performance reports accounted for just three percent of the products/services that we reviewed, they accounted for a significant portion of the total commission dollars used in soft dollar transactions. … We noted that advisers were purchasing performance analyses from firms that also provided consulting services to pension plans. Typically, pension plan consultants assist pension plan fund managers in selecting investment strategies and investment advisers. In exchange for providing these services, the pension plan may direct the adviser to pay commissions to the consultant (in directed brokerage). The staff notes that a conflict of interest exists if an adviser is purchasing performance analyses from consulting firms, not because of the value of the analyses, but in order to curry favor with the consultant in his rankings and recommendations of advisers to pension plans." [emphasis added]

Foundation comment: How should trustees react to this report? Trustees have a fiduciary duty to take "news" into consideration, and cannot ignore the SEC staff's findings, and should ask their investment consultant if the consultant is providing "services" to the very same money managers the consultant has been retained to evaluate and monitor.

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*The **Foundation for Fiduciary Studies** was established in 2000 for the purpose of defining the practices that detail a prudent process for investment fiduciaries. The Foundation is part of the trilogy of organizations focused solely on the subject of investment fiduciary responsibility that make up the unincorporated entity, **Fiduciary 360** (**www.fi360.com**). The other associated organizations include the **Center for Fiduciary Studies**, which is associated with the **University of Pittsburgh Joseph M. Katz Graduate School of Business**; and **Fiduciary Analytics**, which develops Web-based tools based on the fiduciary practices for investment decision-makers.*

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STAFF REPORT CONCERNING

EXAMINATIONS OF

SELECT PENSION CONSULTANTS

May 16, 2005

The Office of Compliance Inspections and Examinations,
U.S. Securities and Exchange Commission

STAFF REPORT CONCERNING EXAMINATIONS OF SELECT PENSION CONSULTANTS[1]
May 16, 2005

Background

"Pension consultants" provide advice to pension plans and their trustees with respect to such matters as: (1) identifying investment objectives and restrictions; (2) allocating plan assets to various objectives; (3) selecting money managers to manage plan assets in ways designed to achieve objectives; (4) selecting mutual funds that plan participants can choose as their funding vehicles; (5) monitoring performance of money managers and mutual funds and making recommendations for changes; and (6) selecting other service providers, such as custodians, administrators and broker-dealers. Many pension plans rely heavily on the expertise and guidance of their pension consultant in helping them to manage pension plan assets.

There are approximately 1,742 SEC-registered investment advisers who indicate that they provide pension consulting services.[2] Pension consultants vary considerably in their business models and in the consulting services they offer. Some are small one person operations, while others are large organizations that employ hundreds of staff. Some of these firms may be independent, "pure-play" consultants that offer pension consulting services only. Other firms may have started as pension consultants, but then added additional business operations such as brokerage and money management, often as affiliates of the pension consultant. In addition, broker-dealers and other types of firms have also started to provide pension consulting in addition to their other lines of business. Pension consultants that offer such other business services frequently seek to sell plan sponsors a "bundled" package of services.

Investment advisers owe their advisory clients a fiduciary duty. The Advisers Act "reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not

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[1] This is a report of the Commission's staff and does not represent findings or conclusions of the Commission itself.

[2] According to the Investment Adviser Registration Depository, as of November 2, 2004, 1,742 SEC-registered investment advisers indicated that they provide pension consulting services. The Investment Advisers Act of 1940 ("Advisers Act") (Section 202(a)(11)) defines an adviser as any person who, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in securities, or who promulgates analyses or reports concerning securities. A person that advises as to the selection or retention of an investment manager is considered an investment adviser under Section 202(a)(11). (*See* Advisers Act Rel. No. 1092 (Oct. 8, 1987).) Rules under the Advisers Act require pension consultants to plans having an aggregate value of at least $50,000,000 to register with the Commission (Rule 203A-2(b)).

disinterested."[3] An adviser owes its clients a duty of "utmost good faith, and full and fair disclosure of all material facts" as well as an affirmative obligation "to employ reasonable care to avoid misleading clients."[4] Thus, the Advisers Act, in recognition of the adviser's fiduciary duty, requires advisers to provide disinterested advice, and to ensure this, requires advisers to disclose material facts.[5] Whether an adviser's relationships with other parties create a material conflict of interest depends on the facts and circumstances.

Investment advisers registered with the SEC typically make such disclosures to advisory clients in their Form ADVs. Part II of Form ADV is typically offered to all advisory clients at the beginning of the advisory relationship and once each year thereafter. Relevant questions in Part II of Form ADV (Items 8, 9, 12 and 13) ask the adviser to state affiliations, participation or interest in client transactions, brokerage transactions, and compensation for client referrals.[6] Investment advisers may also disclose certain matters in documents other than Form ADV.

In addition to the disclosure required by Form ADV, all investment advisers, as fiduciaries, are also expected to inform advisory clients of any material conflicts of interest that may be specific to the particular client. Clients should have information about the pension consultant's conflicts of interest in order to assess the objectivity of the advice that is or may be provided by the pension consultant.

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[3] *See* S.E.C. v. Capital Gains Research Bureau, Inc., 375 U.S. 180, at 191-192 (1963). The Court noted concern, whenever advice to a client might result in financial benefit to the adviser – other than the adviser's fee – that advice may in some way be tinged with that pecuniary interest, whether consciously or subconsciously motivated.

[4] *See Id.*

[5] *See Id. See also, In the Matter of Arleen W. Hughes*, Exchange Act Rel. No. 4048 (Feb. 18, 1948) (adviser has "an affirmative obligation to disclose all material facts to her clients in a manner which is clear enough so that a client is fully apprised of the facts and is in a position to give his informed consent. And this disclosure, if it is to be meaningful and effective, must be timely. It must be provided before the completion of the transaction so that the client will know all the facts at the time that he is asked to give his consent."). *See also, In the Matter of Feeley and Wilcox Asset Management Corp.*, Advisers Act Rel. No. 2143 (July 10, 2003) ("A loyal investment adviser must give disinterested advice. But… an adviser who has a pecuniary interest in a client's transaction other than the agreed fee cannot give disinterested advice. The adviser must disclose that interest to clients or be liable under the antifraud provisions … of the Advisers Act").

[6] The Commission has proposed extensive amendments to Part II of Form ADV, including improved disclosure of conflicts of interest relating to financial industry activities and affiliations. Proposed Item 9.D. of Part 2, Form ADV would require an adviser to describe the practice and discuss the conflicts of interest created when it recommends or selects other investment advisers and receives compensation directly or indirectly from the advisers it recommends or has other business relationships with those advisers. *See Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV*, Advisers Act Rel. No. 1862 (Apr. 5, 2000) [65 FR 20524 (Apr. 17, 2000].

The new "Chief Compliance Officer" rule (Rule 206(4)-7 under the Advisers Act), effective on October 5, 2004, requires advisers registered with the SEC to designate a Chief Compliance Officer and to adopt and maintain written policies and procedures designed to assure compliance with the Advisers Act. The release adopting the rule states that investment advisers should consider their fiduciary and regulatory obligations and formalize policies and procedures to address them.[7] The rule requires that the policies and procedures be reasonably designed to prevent violations of the Advisers Act, and encompass compliance considerations relevant to the adviser's business.

Examinations

Questions have been raised regarding the independence of the advice that pension consultants provide in light of the fact that many pension consulting firms provide services both to pension plans who are their advisory clients *and* to money managers. This duality in many pension consultants' customer base may create a conflict of interest, which has the potential to cloud the objectivity of a pension consultant's recommendations to advisory clients. Concerns exist that pension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or an affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the clients' needs. Such a conflict of interest can compromise the fiduciary duty that investment advisers owe their clients.

Questions have also been raised regarding the extent to which pension consultants disclose these conflicts of interest to their clients, particularly when the pension consultant has other business relationships with money management firms that may compromise its ability to provide objective recommendations with respect to money managers.[8]

To explore the risk areas relating to pension consulting, the Office of Compliance Inspections and Examinations ("OCIE") conducted focused examinations of 24 pension consultants who are registered investment advisers. The pension consultants examined represented a cross-section of the pension consultant community, and ranged in size (measured in terms of the number and size of their pension plan clients), and the type of products and services they offer. About half of the pension consultants examined are among the largest pension consulting firms, measured in terms of the assets of the plans they advise. We sought information regarding pension consultants' practices with respect to: (1) the products and services they provide to pension plan clients and any products/services provided to money managers or mutual funds; (2) the method of payment for the pension consultant's services; and (3) the disclosure provided to the pension consultants' clients. The period covered by the examinations was from January 1, 2002 to November 30, 2003. We also examined several money managers, as a means to view pension consultants from a distinct vantage point – that of those being employed based on the recommendation of a pension consultant.

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[7] *Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Rel. No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003].

[8] Plan trustees themselves may face significant conflicts of interest. Plan trustees may have allegiance both to the plan and its beneficiaries, and to the plan sponsor that appoints them. Plan trustees may receive economic benefits directly or indirectly from plan service providers. Plan trustees may also seek to reduce costs borne by the plan or plan sponsor by using directed brokerage commissions to pay plan service provider fees.

This report provides a factual summary of these examinations.

Summary

Our findings, based on our examinations of 24 pension consulting firms, are summarized below.

- **More than half of the pension consultants or affiliates reviewed (13) provided products and services to both pension plan advisory clients *and* money managers and mutual funds on an ongoing basis.**[9] For some of these consulting firms, the compensation received from money managers comprised a significant part of their annual revenue.

  - **Thirteen consultants host conferences for their pension plan advisory clients, who are typically invited to attend without charge. Of these 13, eight also allow money managers to attend these conferences for a fee.** Fees paid by money managers to attend these conferences go towards either the cost of producing the conference or the travel costs of the pension plan trustees attending the conference. Some pension consultants also operate recurring training courses for plan sponsor clients and staff of money managers. Typically, money manager employees are charged tuition or an annual membership fee, and trustees and other employees of pension plan clients are allowed to participate without charge.

  - **Ten consultants sell software programs to money managers, which analyze the performance of clients' accounts**. The cost of such software products can run as high as $70,000 per year depending on the function of the product.

- **A majority of the pension consultants examined (14, or 58%) have affiliated broker-dealers or relationships with unaffiliated broker-dealers.**

  - **Having an affiliated broker-dealer allows the pension consultant to obtain payment for its services with brokerage "commission recapture" programs.** Recapture programs allow pension plan advisory clients to direct that a portion of the brokerage commissions paid by the plan be rebated to the plan, or be used to pay the pension consultant's fee. Pension plans may desire to pay the consultant's fees in this way because the fees may not be itemized and are included in the overall brokerage commissions paid by the plan. These arrangements are not well-documented, and raise many issues, including the extent to which plan assets may not be receiving "best execution" because their trades are directed to the broker that provides these rebates. Concerns also exist that, by paying for the consultant's fees with the plan's brokerage, plans may overpay for the pension consultant's services because the directed brokerage arrangements may not be capped to terminate when fees due a pension consultant have been paid in full. In addition, concerns exist that these arrangements may provide an incentive for a pension consultant to recommend an

[9] Thirteen pension consultants actively provided products and services to money managers and mutual funds on an ongoing basis, and six others had one-time only, or very limited, business relationships/arrangements with money managers during the inspection period.

active trading strategy, because the pension consultant or its affiliated broker may receive more money in commission payments.

  - **Two pension consultants have brokerage referral arrangements with unaffiliated broker-dealers that do not appear to be disclosed.** In these arrangements, the pension consultant refers its pension plan clients to the broker-dealer to execute brokerage transactions, and the broker-dealer then provides payment to the pension consultant in amounts based on the amount of commission dollars the broker-dealer receives from the referred plans. It does not appear that these pension consultants disclose to clients that they receive payment from the broker-dealer contingent on the amount of transactions referred.

  - **These relationships with broker-dealers also provide a mechanism for money managers to compensate pension consultants, perhaps as a way to curry favor with the pension consultant.** The staff's concern is that money managers may direct trades for clients with no relationship to the pension consultant to the pension consultant's affiliated broker-dealer.

- **We could not fully analyze whether pension consultants "skewed" their recommendations to favor certain money managers.** Most consultants did not maintain information in a format that would allow us to correlate total payments made by money managers to the pension consultant or its affiliates, and the number of times money managers were recommended to clients.

  - Of the six consultants where data allowed for this analysis, we found indications that three had recommended money managers who purchased products and/or services from the pension consultant more frequently than money managers that did not purchase products from the pension consultant.

- **Many pension consultants have affiliates that also provide services to pension plan clients. These relationships create disclosure and conflict of interest issues that have not been addressed by pension consultants.**

  - **More than a third of the pension consultants examined (9, or 38%) employ advisory representatives that are also registered representatives of a broker-dealer.** These "dual-hatted" employees act both as a pension adviser and as a broker-dealer representative. They are typically compensated with commissions paid on trades placed by the client through the pension consultant's affiliated broker-dealer firm. In these cases, not all pension consultants disclose that that their employees may receive compensation based on the volume of securities transactions executed by the client.

  - **Based on the recommendation of their pension consultant, many pension plan clients choose to utilize an affiliate of the pension consultant to provide various services, including investment management, brokerage execution, and transition management.** Where the pension consultant is making recommendations that are not disinterested (i.e., that the client utilize a service provided by an affiliate of the pension consultant), the pension consultant has a duty to disclose its conflicts to the client.

- **Of the 19 consultants or their affiliates that provided products/services to money managers, three (or 16%) provided no disclosure of these other services, and 16 (or 84%) provided limited disclosure**.[10]

  - **With respect to the pension consultants that do provide disclosure, it does not clearly indicate that providing products/services to money managers may create a conflict of interest for the consultant, or it is not specific enough for a reasonable person to discern the potential harm of the conflict of interest.** That is, some pension consultants disclose generically that various services are provided to money managers (e.g., "*the firm also provides performance measurement and investment product review to money manager clients*"), and require the advisory client to infer that the consultant receives compensation from money managers. Pension consultants typically do not disclose to current and prospective pension plan clients that they receive compensation in various forms from the same money managers that the consultant may recommend to the client. Only one pension consultant made client-specific disclosure that it had provided products and services to the same money managers it was recommending to a client (there was no disclosure suggesting the dollar amounts involved in these arrangements, which might indicate the magnitude of the conflict to a pension plan advisory client).

- **Many pension consultants do not consider themselves to be fiduciaries to their clients.** Many pension consultants believe they have taken appropriate actions to insulate themselves from being considered a "Named Fiduciary" under ERISA. As a result, it appears that many consultants believe they do not have any fiduciary relationships with their advisory clients and ignore or are not aware of their fiduciary obligations under the Advisers Act.

- **Many pension consultants did not maintain policies and procedures that were tailored to the nature of their business.** Specifically, consultants did not maintain procedures concerning how they prevent or manage conflicts of interest in their activities or governing disclosure of conflicts to clients. Since this examination sweep was initiated however, several pension consultants have indicated that they have taken steps to eliminate or mitigate conflicts of interest, including by closing or selling business lines that provided services to money managers, or creating information barriers between consulting and other business lines.[11] We are aware of only one pension consultant that has altered its disclosure to clients to include client-specific disclosure of the payments received by the pension consultant or its affiliates from the money managers it is recommending.

- **Money managers appear to have relationships with multiple consultants, appear to purchase overlapping products from more than one consultant, and are recommended**

[10] As noted, thirteen consultants had ongoing conflicts of interest, and six consultants had one-time-only or very limited business relationships with money managers during the inspection period.

[11] Because these information barriers may have been imposed after our examinations, we did not evaluate whether they were effective.

by those consultants to plan sponsors. It appears that many money managers do not disclose their relationships with consultants to their pension plan clients to whom they are recommended by those consultants.

Given the examination findings, we conclude that consultants should enhance their compliance policies and procedures to include those policies and procedures that will ensure that the adviser is fulfilling its fiduciary obligations to its advisory clients. As noted, pension consultants that are registered investment advisers are now subject to the new "Chief Compliance Officer Rule" (Rule 206(4)-7 under the Advisers Act) that requires advisers to consider their fiduciary and regulatory obligations under the Advisers Act and to formalize policies and procedures to address them.[12] In adopting the rule, the Commission stated that "[e]ach adviser, in designing its policies and procedures, should first identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations, and then design policies and procedures that address those risks."[13] Given the activities of pension consultants, such policies/procedures might include, for example:

- **Policies and procedures to ensure that the firm's advisory activities are insulated from its other business activities, to eliminate or mitigate conflicts of interest in its advisory activities.** Such policies and procedures would include those governing the process used to identify and/or monitor money managers or mutual funds for an advisory client, to prevent considerations of a money manager's or mutual fund's other business relationships with the consultant or its affiliates;

- **Policies and procedures to ensure that all disclosures required to fulfill fiduciary obligations are provided to prospective and existing advisory clients**, particularly regarding material conflicts of interest arising from arrangements between the consultant and its affiliates and the money managers and mutual funds that the consultant recommends to a client during a manager search or for whom the consultant is providing ongoing monitoring services. Policies/procedures should be designed to ensure adequate disclosure concerning the consultant's compensation, including when the pension consultant receives compensation from brokerage transactions from advisory clients or money managers; and

- **Policies and procedures to prevent conflicts of interest or disclose material conflicts of interest** with respect to the use of brokerage commissions, gifts, gratuities, entertainment, contributions, donations and other emoluments provided to clients or received from money managers.

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[12, 13] *Compliance Programs of Investment Companies and Investment Advisers,* Advisers Act Rel. No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003].