

NEXUS338

Empower Settles with the SEC for Disclosure and Fiduciary Violations re: Managed Account Offering

By: Philip Chao, Founder, CIO, Nexus338, August 29, 2025

<https://www.sec.gov/files/litigation/admin/2025/34-103809.pdf>

SETTLEMENT

On August 29, 2025, the Securities and Exchange Commission (SEC) accepted Empower's¹ offer to settle the cease-and-desist proceedings. The SEC ordered that:

(A) Empower “cease and desist” for committing or causing any violations and any future violations of Section 206(2) of Section 206 of the Investment Advisers Act is the anti-fraud provision that prohibits investment advisers from engaging in deceptive practices and requires advisers to obtain client consent for certain transactions. Under section 206(2), prohibits advisers “to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client”

(B) Empower Financial Services cease and desist from committing or causing any violations and any future violations of Rule 15l-1(a)(1) promulgated under the Exchange Act.

More specifically, Rule 15l-1(a)(1) mandates that broker-dealers act in the best interest of retail customers when making recommendations regarding securities transactions or investment strategies. This rule is a part of the Regulation Best Interest² which was passed on June 5, 2019.

(C) Empower Financial is censured.

(D) Empower Financial shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling \$5,989,969.94 as follows:

(i) Empower Advisory shall pay disgorgement of \$4,063,569.80, prejudgment interest of \$426,400.14, and a civil monetary penalty in the amount of \$750,000, consistent with the provisions of this Subsection.

(ii) Empower Financial Services shall pay a civil monetary penalty in the amount of \$750,000, consistent with the provisions of this Subsection D.

¹ Empower Advisory Group, LLC (“Empower Advisory”) and Empower Financial Services, Inc. (“Empower Financial Services”)

² Regulation Best Interest (Reg BI): The SEC’s Rule for Broker-Dealers Congressional Research Service https://www.congress.gov/crs_external_products/R/PDF/R46115/R46115.1.pdf

BACKGROUND SUMMARY

(A) The Market

Empower describes its Government Markets segment as providing retirement plan services to individuals employed by a state government or political subdivision, or by agencies or instrumentalities thereof.

(B) Retirement Plan Advisers

RPAs are responsible for, among other things, providing one-on-one education to all Plan Participants and personalized retirement advice on investing, savings strategies, and distributions. This also includes discussing and at times advising Plan Participants about enrolling their in-plan retirement accounts in Empower Advisory's Managed Account service.

(C) The Managed Account Service

The Managed Account service is only available to Plan Participants if their plan sponsor has specifically contracted with Empower Advisory to provide the Managed Account service. There are three ways to enroll by Plan Participants

- (1) Using the online account service tools provided by Empower, a Plan Participant may elect to enroll in the Managed Account service without having contact with a RPA. Or,
- (2) The Plan Participant may choose to enroll in the Managed Account service following an interaction with a RPA, which would typically be through a Retirement Readiness Review.

(D) Retirement Readiness Review

This is a meeting between the RPA and Plan Participant during which the RPA collects detailed information about the Plan Participant's existing accounts, retirement income needs, and unique circumstances to provide retirement education and customized investment advice and recommendations.

(E) RPA's Performance Goals and Compensation

(1) Performance Goals

Prior to the beginning of each year RPAs received a document that outlined the yearly performance goals that would impact their annual compensation. For certain RPAs, one of their yearly performance goals was the amount of assets that they were responsible for enrolling in Empower Advisory's Managed Account service ("Managed Account AUM Goal").

(2) Goal Setting

Annually, each of the RPAs' performance goals was weighted, and the weight of the Managed Account Asset Under Management (AUM) Goal for the relevant RPAs ranged from 25% to 35% of their total annual performance goal set.

(3) Performance Rating

At the end of each year, the manager evaluates the RPA's performance goals along with other objective standards and subjective qualities and assigned a year-end performance rating. The manager then used that performance rating to recommend an appropriate bonus and merit raise for the RPA, with higher year-end ratings corresponding with higher bonuses and merit raises. The manager's recommendations for their RPAs were then considered by Government Markets leadership as part of an overall annual calibration process for all RPAs. This compensation structure incentivized RPAs to enroll Plan Participants in the Managed Account service.

(4) Compensation and Bonus Range

The average Retirement Plan Advisor salary was approximately \$60,000 – \$90,000, and the total target bonus amount for RPAs was generally set at \$11,500, with most RPAs receiving bonus amount or slightly more or less than the target amount.

(5) The Conflicted Conversion Process To Managed Account

- Each RPA has a performance goal for the number of Retirement Readiness Reviews they were expected to conduct each year. The weight assigned to the Retirement Readiness Review performance goal ranged from 25% to 30% of their total annual performance goal set.
- After asking the questions, the RPA enters the Plan Participant's information into the Review tool and a customized output is provided depicting the Plan Participant's current projected retirement income versus their projected retirement income if they were to make changes to their investment strategy/asset allocation.
- The RPA is responsible for advising and educating the Plan Participant about the various ways they could implement the recommended investment strategy/asset allocation generate, which included: (1) self-managing their retirement account,
- investing in a target date fund or using the self-service online advice tool, or (3) enrolling in the Managed Account service, which charges a quarterly advisory fee. During Retirement Readiness Reviews, certain RPAs routinely spent a significant amount of time discussing the benefits of the Managed Account

- service while only focusing on the drawbacks of self-managing or investing in a target date fund.
- Some RPAs made statements to Plan Participants concerning compensation were misleading because they did not disclose that they had a financial incentive to enroll the Plan Participant in the Managed Account service.

“For example, throughout the Retirement Readiness Reviews, certain Retirement Plan Advisors routinely told Plan Participants they were salaried or noncommissioned, acting in a fiduciary capacity, and that they were acting in the Plan Participant’s best interest. In more egregious cases, Retirement Plan Advisors even told Plan Participants that their enrollment in the Managed Account service would not affect the Retirement Plan Advisor’s compensation and that no conflict of interest existed. These statements assured Plan Participants that Retirement Plan Advisors were providing disinterested advice that was in the Plan Participants’ best interest when Retirement Plan Advisors advised Plan Participants to enroll in the Managed Account service.”

CONCLUSION

(A) Failure to fully disclose conflicts

From July 1, 2019, through December 31, 2022 (the “Relevant Period”), Empower utilized a compensation system that incentivized certain Government Markets RPAs - with bonuses and merit raises - to enroll Plan Participants in the Managed Account service. RPAs are both registered representatives associated with Empower Financial Services (subject to the Exchange Act) and investment adviser representatives with Empower Advisory (subject to the Advisers Act). Empower did not adequately disclose the conflicts of interest that the incentive compensation system presented for certain RPAs. This omission rendered misleading certain RPA statements to Plan Participants regarding the RPAs’ role in discussing or recommending enrollment in the Managed Account service. This included statements made by certain RPAs that they were salaried and/or noncommissioned. Some RPAs also told Plan Participants that they were acting in a fiduciary capacity and that they were acting in the Plan Participant’s best interest. These statements, which were in connection with the purchase or sales of securities, assured Plan Participants that RPAs were providing disinterested advice when they

enrolled their in-plan retirement accounts in the Managed Account service, but did not disclose their financial incentives to do so.

(B) Failure to meet compliance requirements

Empower did not establish, maintain, and enforce written policies and procedures reasonably designed to identify and address conflicts of interest in connection with recommendations to enroll in the Managed Account service.

Disclosure

This document should not be perceived as Philip Chao or any member of Nexus338, LLC. delivering or providing regulatory and legal advice. The content is solely prepared for educational and informational purposes. Any desired action resulting from reading this document should first be carefully discussed and reviewed with competent subject matter experts and ERISA and SEC counsel.