

## SEC Enforcement Case Summary Failure to Disclose Class Action Litigation & Collection of Related Claims

On April 7, 2025, the Securities and Exchange Commission (**SEC**) announced settled charges against investment adviser, Advance Capital Management, Inc., for causing a registered investment company it managed, Advance Capital I, Inc. (**ACI**), a four fund series open-end investment company, to include materially false and misleading information in ACI's application to deregister as a registered investment company filed with the SEC. The filing failed to disclose the existence of pending claims in certain class actions, which Advance Capital Management collected after ACI disbanded.

According to the SEC's complaint, the funds invested in fixed income securities and shares of companies. When some of those companies became the subject of shareholder class action litigation, ACI and its investors stood to benefit if the class actions were resolved through settlements or judgments that would result in distributions by the companies to the respective class members. Advance Capital Management initially handled ACI's class action claims itself until 2013, when it contracted with a third party (**Claims Agent**) to identify class actions that could benefit one or more funds, file any necessary paperwork, and remit any settlement proceeds, less the Claims Agent's fee, to Advance Capital Management for the benefit of the relevant fund(s).

In 2016, ACI's Board of Directors voted to liquidate and close the funds. ACI subsequently filed a Form N-8F with the SEC, documenting its intent to apply for deregistration. The form asked for information regarding fund assets and whether ACI was a party to any litigation. Advance Capital Management failed to provide information that would have identified ACI as a member of certain shareholder classes on whose behalf class actions had been brought. The Board approved a plan of liquidation that included a limit on the expenses Advance Capital Management could charge "to protect shareholders from unfairly bearing the burden of potentially increased fees as the size of the Funds decreases." According to the agreement, Advance Capital Management could be reimbursed for any waived expenses "if the Fund is able to make the repayment without exceeding its current expense limitations ... and the repayment is approved by the Board." Advance Capital Management liquidated the funds pursuant to the Board-approved plan but did not liquidate the class action claims. The adviser reportedly tracked its expenses through the liquidation process, calculating that it cost the firm \$518,433 in costs and forgone fees.

The SEC noted that as part of the liquidation process, Advance Capital Management failed to consider whether pending class action claims could be monetized for the benefit of fund shareholders prior to redemption, or otherwise be used to benefit investors, even after it received an unsolicited offer to liquidate the funds' outstanding class action claims. After liquidating the funds, the SEC order notes that Advance Capital Management continued to receive sporadic distributions of proceeds from ACI's class action claims. The SEC faulted Advance Capital Management for not distributing these proceeds to ACI's former shareholders. Advance Capital Management subsequently created a compliance policy that allowed the firm to keep the proceeds of ACI's class action claims as reimbursement for the costs, including those in excess of the expense limitation, that it had incurred in liquidating the funds and closing ACI. Advance Capital Management determined that if the proceeds "exceeded the total expenses paid by the adviser, will determine how to allocate the excess proceeds." It does not appear that the proceeds exceeded the adviser's expenses and presumably the adviser could have requested approval to reimburse such expenses. However, given the disclosure failures, the firm agreed to pay nearly \$600,000 to settle the case including disgorgement, prejudgment interest, and a civil penalty.

**See Summary -** <https://www.sec.gov/enforcement-litigation/administrative-proceedings/ic-35522-s>