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CLIENT ALERT

# SEC Division of Examinations Issues Risk Alert on Investment Adviser Economic Conflicts of Interest

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**AUTHORS**

Benjamin B. Allensworth | James E. Anderson | Brian J. Baltz | A. Kristina Littman
Jennifer R. Porter


On June 9, 2026, the SEC's Division of Examinations (the "Division" or the "Staff") issued a risk alert sharing observations from examinations of SEC-registered investment advisers concerning economic conflicts of interest (the "Risk Alert").[1] The Risk Alert states that the Division, in reviewing whether advisers have complied with their fiduciary obligations, prioritizes the economic incentives that advisers and their financial professionals have to recommend certain products, services, or account types to clients and the disclosures provided to clients regarding

[1] *Examinations Observations of Investment Adviser Obligations Related to Economic Conflicts of Interest*, SEC Division of Examinations (June 9, 2026). As with all staff statements, the Risk Alert is not a rule or regulation, has no legal force or effect, does not alter or amend applicable law, and creates no new or additional obligations for any person.

those incentives and the related conflicts of interest.[2] Examples of such incentives include the source and structure of compensation, revenue, or other economic benefits.

The Division's observations were categorized into five areas: (1) conflicts of interest associated with advisers' cash management recommendations; (2) conflicts of interest associated with other revenue opportunities; (3) disclosing fees and economic conflicts of interest in Form ADV; (4) fees deviating from advisory agreements and fee-related disclosures; and (5) compliance programs identifying and addressing fee-related issues. Advisers may want to consider reviewing and refining their disclosures and compliance policies and procedures in light of these observations, and identify and address material economic conflicts of interest as they arise.

### A. Conflicts of Interest Associated with Advisers' Cash Management Recommendations

The Division observed advisers that received revenue in exchange for recommending programs through which their clients' uninvested cash was automatically moved into interest-bearing accounts, including accounts held by affiliates ("cash management recommendations"). The Staff observed instances where fees were materially inconsistent with advisory agreements and disclosures, compliance programs did not fully address the conflicts, and disclosures were misleading or omitted material information.

***Disclosures related to revenue sharing arrangements.*** The Staff identified advisers that failed to disclose the revenue they received from certain custodians based on the cash balances their clients held with those custodians. The Staff also observed advisers that failed to disclose incentives for the adviser to recommend cash sweep vehicles that resulted in the greatest possible compensation to the adviser. The Staff also identified inadequate disclosures stating that the adviser "may" receive revenue for client cash balances held in a third-party bank's cash sweep program when the adviser actually received such revenue.

***Disclosures related to fees, expenses, and conflicts of interest.*** The Staff noted that some advisers did not fully and fairly disclose the fees, expenses, and conflicts of interest related to their cash management recommendations. For example, they observed advisers omitting that certain clients' cash balances were subject to the advisers' asset-based fees and that those fees and expenses could have an impact on the investment returns or generate negative returns.

***Disclosures related to money market fund share class selection.*** The Staff further observed advisers that did not make full and fair disclosure regarding the economic benefits received for their money market fund share class selection recommendations. For example, some advisers did not disclose that their only cash management recommendations involved higher-cost money market funds engaged in revenue sharing programs with the adviser

[2] The Risk Alert noted that, as fiduciaries, investment advisers have an obligation to eliminate or at least expose through full and fair disclosure all conflicts of interest that might incline an investment adviser to render advice that was not disinterested. *Citing Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Advisers Act Rel. No. 5248 (June 5, 2019).

or disclose that a client could invest in lower-cost shares of the same money market funds that did not provide a revenue sharing program for the adviser.

### B. Other Revenue Opportunities

The Division also observed advisers that had conflicts of interest related to the selection of mutual fund share classes that paid Rule 12b-1 fees to the adviser (as a dually registered broker-dealer), its representatives or its related entities when a lower-cost share class of the same fund was available to the adviser's clients. The Staff observed advisers that did not provide full and fair disclosure of the:

- Economic benefits that the advisers received with respect to their recommendations regarding mutual fund share class selection, custodial credits, margin loans and credits, and transaction markup fees;
- Revenue that their broker-dealer affiliates received in connection with interest rate markups on margin loans extended to advisory clients;
- Credits that the advisers received for custodial and clearing relationships, or termination fees that the advisers received if those clearing relationships were terminated; and
- Additional fees and expenses that the advisers assessed, including by marking up the clearing brokers' fees beyond what the clearing brokers had charged, and adviser-incurred termination fees.

### C. Disclosing Fees and Economic Conflicts of Interest in Form ADV

The Staff observed compensation-related misstatements or omissions in advisory brochures (Part 2A of Form ADV). For example, the Staff observed advisers that did not fully disclose under Item 10 all required financial industry activities and affiliates, such as material conflicts of interest created through compensation agreements with affiliates, such as an affiliated broker-dealer that is likely to receive an indirect benefit through the revenue generated by the services that clearing firms performed for advised clients. The Staff further observed advisers that did not include all required disclosures under Item 12 regarding the factors the advisers consider in selecting broker-dealers for client transactions and determining the reasonableness of their compensation. The Staff observed, for example, advisers that had revenue sharing arrangements with clearing agencies but did not disclose all material facts regarding those relationships.

### D. Fees Deviating from Advisory Agreements and Fee-Related Disclosures

The Division observed advisers assessing advisory fees in a manner inconsistent with their advisory agreements, disclosures or both; advisers assessing fees for services not provided; and advisers not issuing refunds in certain circumstances. Examples of such inconsistencies included:

- Prorating fees after clients made deposits or withdrawals during the billing period despite agreements and disclosures not addressing such prorating, (e.g., disclosing that asset-based fees would be calculated using beginning-of-month balances but prorating the fee for a large mid-month deposit);
- Charging asset-based fees on holdings that the advisory agreement specifically excluded from billing (e.g., initial cash inflows and fixed income assets);
- Assessing incorrect fee rates and not applying reduced asset-based fee rates for cash and fixed income assets (e.g., not householding accounts for fee rate breakpoints or not identifying fixed income mutual funds as fixed income assets that had lower asset-based fees); and
- Failing to rebate transaction fees (e.g., mutual fund transaction fees) despite advisory agreements stating that clients would not incur them.

The Staff also observed advisers assessing fees for services not provided or assessing higher fees than agreed upon for the services provided. Examples of such inconsistencies included:

- Charging clients fees when the personnel managing the accounts departed and the accounts were not reassigned to remaining personnel;
- Charging fees on inactive accounts that received no supervisory or management services, including accounts that clients had requested, in writing, be closed;
- Charging fees more than once for the same services, including duplicative billing that was the result of internal asset transfers; and
- Failing to refund clients who were billed in advance and terminated their agreements before the end of the billing period, including where the client had not provided *written* notice seeking a refund upon termination (emphasis included in the Risk Alert).

**E. Compliance Programs Identifying and Addressing Fee-Related Issues**

The Division observed advisers that did not appear to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, as required by the Compliance Rule.[3] The Division noted that these policies and procedures did not indicate how the advisers would execute their billing practices accurately and consistent with their fiduciary obligations, advisory agreements, and disclosures. For example, the Staff observed that:

3 Advisers Act Rule 206(4)-7.

- Some policies and procedures did not fully address applicable billing arrangements, such as prepaid fees, margin on client accounts, and fee reductions including by the householding of accounts;
- Some policies, disclosures, and agreements contained conflicting information regarding fees and the adviser's ability to withdraw advisory fees directly from client accounts, provided inconsistent schedules or narratives, or included disclosures that were overly complicated or difficult to reconcile with other related disclosures; and
- Some advisers lacked controls to monitor for accurate fee and rebate calculations, such as monitoring the accuracy of all types of client fees assessed, testing for calculation errors, and evaluating whether rebates and refunds were issued to terminated accounts, resulting in certain clients being overcharged advisory fees.

**Conclusion**

The Risk Alert underscores the Division's continued focus on economic conflicts of interest, advisory fee billing, and the consistency between advisers' disclosed and actual billing practices. The Risk Alert also reflects the SEC's continued focus on conflicts of interest involving the inclusion of cash sweep programs in advisory offerings following the SEC's settled enforcement actions involving investment advisers' use of cash sweep programs at the end of the Biden administration. Similarly, the Risk Alert's discussion of fee calculations and disclosures reinforces the SEC's continued focus on ensuring that investment advisers appropriately disclose and calculate the amounts that clients will pay. As a result, advisers may want to consider reviewing and refining their practices, disclosures and compliance policies and procedures in light of these observations.

**If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.**

**Benjamin B. Allensworth**

202 303 1273
ballensworth@willkie.com

**James E. Anderson**

202 303 1114
janderson@willkie.com

**Brian J. Baltz**

202 303 1094
bbaltz@willkie.com

**A. Kristina Littman**

202 303 1209
aklittman@willkie.com

**Jennifer R. Porter**

202 303 1223
jporter@willkie.com

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