

SEC Risk Alert Puts Investment Adviser Conflicts of Interest Back in Focus

by David Tang, Bradley M. Pugh, Michael Schmieder, Wesley Papiernik, and Kate Zurcher

On June 9, 2026, the staff (the “Staff”) of the Securities and Exchange Commission’s (the “SEC”) Division of Examinations issued a Risk Alert summarizing examination observations relating to investment advisers’ economic conflicts of interest.¹ The Risk Alert identifies recurring deficiencies across three interconnected areas: (i) conflict identification and disclosure; (ii) advisory fee billing practices; and (iii) the adequacy of compliance programs. While the Risk Alert does not establish new legal requirements, it reinforces themes the Staff has examined closely for several years and provides an indication of where examination focus will continue.

I. Identifying and Disclosing Economic Incentives

The most pervasive deficiencies identified by the Staff in the Risk Alert involved advisers that had failed to adequately identify or disclose economic conflicts. The Staff noted that while the Division of Examinations often identified economic conflicts of interest that were undisclosed, it also frequently observed disclosures that were imprecise, outdated, or framed in terms that no longer reflected how the adviser operated.

The Staff highlighted three categories of arrangements in particular where it identified common compliance deficiencies:

Cash sweep and cash management programs. Advisers that route client uninvested cash into affiliated or third-party sweep vehicles and receive revenue-sharing or other compensation tied to those balances face a straightforward but frequently mishandled conflict. The Staff found disclosures describing compensation as something the adviser “may”² receive when that compensation was already being received or the adviser had already entered into a revenue sharing arrangement. Under the SEC’s fiduciary interpretation, that framing is inadequate.³ Advisers should confirm that their public disclosure filings (e.g., Form ADV), offering documents, marketing materials and client agreement disclosures sufficiently describe conflicts of interest related to cash

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management recommendations and revenue sharing arrangements.

Share-class and product selection. The Staff observed advisers recommending share classes of money market funds or mutual funds that generated compensation for the adviser or its affiliates when lower-cost alternatives were available. The Staff's observations suggest that disclosure alone may not eliminate regulatory scrutiny where economic incentives influence product or share-class recommendations. Advisers should consider whether they can substantiate the basis for such recommendations and whether related compensation arrangements are fully and fairly disclosed.

Other compensation arrangements. The Risk Alert also identified disclosure gaps involving custodial credits, margin lending relationships, transaction markups, and compensation flowing to affiliated broker-dealers. These arrangements can be individually material and are easy to overlook in periodic disclosure reviews because they are not tied to a specific investment recommendation. Advisers should review all third-party and affiliated compensation arrangements periodically and confirm that each is sufficiently addressed in client disclosures documents to allow clients to understand what alternative compensation the adviser receives and the material conflicts of interest that each arrangement raises.

Advisers should consider tracking material conflicts of interests through internal conflicts lists or matrixes: identifying each economic arrangement, the form of compensation, the client-facing disclosure that addresses it, and the date of last review. Connecting each entry to a specific disclosure/marketing document or agreement provision makes it easier to confirm that disclosures remain current and to respond to Staff inquiries during an examination.

II. Advisory Fee Billing Practices

The Staff also devotes substantial attention in the Risk Alert to fee billing practices. The Staff observed billing errors, including those traceable to administrative mistakes. Advisers should note that the Division of Examinations has historically focused closely on the fee billing practices of advisers during exams.

The Staff's findings fell into two broad categories. The first involved billing inconsistent with what the adviser had agreed to charge: applying incorrect fee rates, billing on excluded assets, failing to apply negotiated breakpoints or householding arrangements, and not providing agreed fee offsets or rebates. The second involved billing for services no longer being provided: continuing to charge fees after the departure of advisory personnel without account reassignment, billing on inactive accounts, assessing duplicative fees after internal account transfers, and failing to refund prepaid fees following account termination.

Both categories share a common cause: billing systems that are not regularly tested against the actual terms of client agreements. Advisers should treat fee billing audits as a routine compliance function, with particular attention to accounts in transition (new, terminating, or restructured accounts), negotiated fee arrangements and manual billing

overrides, householding elections and fee-offset commitments reflected in client correspondence or side letters, and prepaid fee accounts requiring timely refund upon termination.

III. Compliance Programs That Reflect Current Business Practices

Finally, the Staff noted that many advisers failed to sufficiently implement their written compliance policies and procedures related to their economic conflicts of interest or fee billing practices, and that many advisers' policies and procedures were either inaccurate, inconsistent or incomplete. The Staff observed advisers whose written policies did not address all billing methodologies in use, whose disclosure documents contained internal inconsistencies, and whose controls did not include mechanisms to verify fee calculation accuracy or confirm that terminated accounts were no longer being charged.⁴

Rule 206(4)-7 under the Investment Advisers Act of 1940 requires not just that an adviser has written policies, but that those policies be reasonably designed to prevent violations and that such policies will be reviewed and updated as the business evolves. Advisers should keep in mind that the Staff also focuses on the internal compliance review processes of an adviser when they are conducting an examination. The Division of Examinations frequently issues compliance deficiencies on the basis of inadequate internal review processes.

Dorsey Observations

The Risk Alert reflects consistent themes regarding the SEC's historic focus on economic conflicts of interest between investment advisers and their clients. Advisers should regard this Risk Alert as an opportunity to enhance their annual and periodic internal compliance reviews to ensure they are not engaging in the common compliance deficiencies identified. The Staff's observations are specific enough in several instances to be actionable, and remediating common deficiencies before being examined is an opportunity to showcase a strong culture of compliance.

Advisers would be well advised to consider the following:

- Conduct an analysis comparing current billing methodologies and compensation arrangements against the written policies that govern them, and update policies where they are silent or ambiguous;
- Route new compensation arrangements, particularly those involving affiliated entities or third-party revenue sharing, through compliance for review before implementation rather than updating disclosure documents and compliance policies after the fact;
- Include in compliance testing a periodic reconciliation of fee calculations against executed advisory agreements, not just a review of billing system outputs; and
- Cross-reference Form ADV, offering documents, marketing materials and client agreements to identify inconsistencies, with a designated internal "owner" of these documents responsible for keeping them aligned.

¹ SEC Division of Examinations, *Examination Observations of Investment Adviser Obligations Related to Economic Conflicts of Interest* (June 9, 2026) (the "Risk Alert").

² See Fiduciary Interpretation, *supra* note 2 (disclosure that a conflict “may” exist is inadequate where the conflict already exists and is known to the adviser).

³ See *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, Advisers Act Rel. No. 5248 (June 5, 2019) (“Fiduciary Interpretation”) (an adviser’s duty of loyalty requires that it “eliminate or at least expose through full and fair disclosure conflicts of interest that might incline an investment adviser to render advice that is not disinterested”).

⁴ Rule 206(4)-7 under the Investment Advisers Act of 1940 requires policies and procedures that are reasonably designed to prevent violations that must be reviewed at least annually and updated as needed. See *Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Rel. No. 2204 (Dec. 17, 2003); 17 C.F.R. § 275.206(4)-7.