



RISK ALERT

DIVISION OF EXAMINATIONS

June 9, 2026

Examinations Observations of Investment Adviser Obligations Related to Economic Conflicts of Interest*

I. Introduction

As fiduciaries, investment advisers have an obligation to eliminate or at least to expose through full and fair disclosure, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.¹ During examinations of SEC-registered investment advisers (“advisers”), the Division prioritizes the review of economic incentives that advisers and their financial professionals may have to recommend certain products, services, or account types to their clients (*e.g.*, the source and structure of compensation, revenue, or other economic benefits).²

The staff reviews whether advisers have complied with their fiduciary obligations in the context of economic conflicts of interest in various ways. For example, the staff assesses if advisers have adopted and implemented written policies and procedures that are reasonably designed to address compliance with the advisers’ fiduciary obligations under the Advisers Act.³ The staff also reviews whether advisers have disclosed the fees and expenses associated with their advisory services with sufficient clarity for clients to understand the costs and economic incentives related to (1) the advisers’ recommendations and (2) provide informed consent to the

* The views expressed herein are those of the staff of the Division of Examinations (the “Division” or the “staff”). This Risk Alert is not a rule, regulation, or statement of the Securities and Exchange Commission (the “SEC” or the “Commission”). The Commission has neither approved nor disapproved the content of this Risk Alert. This Risk Alert, like all staff statements, has no legal force or effect; it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

¹ [Commission Interpretation Regarding Standard of Conduct for Investment Advisers](#), Advisers Act Rel. No. 5248 (Jun. 5, 2019) (“[Fiduciary Interp.](#)”), p. 23, n. 57, referencing [SEC v. Capital Gains Research Bureau, Inc.](#), 375 U.S. 180, 194 (1963). This fiduciary duty is enforced under the Investment Advisers Act of 1940 (“Advisers Act”) [Section 206](#).

² See [Division Examination Priorities](#) from fiscal years 2021-2026 (identifying advisers’ economic incentives as a Division priority since 2021). Economic incentives may stem from a variety of arrangements, such as when an adviser benefits from revenue sharing or markups. The Division has also previously published Risk Alerts highlighting similar compliance issues (see, *e.g.*, [Risk Alert: Overview of the Most Frequent Advisory Fee and Expense Compliance Issues Identified in Examinations of Investment Advisers](#) (Apr. 12, 2018) and [Risk Alert: Investment Advisers’ Fee Calculations](#) (Nov. 10, 2021)).

³ See Advisers Act [Rule 206\(4\)-7](#) (the “[Compliance Rule](#)”) and SEC, [Final Rule: Compliance Programs and Investment Companies and Investment Advisers](#), Advisers Act Rel. No. 2204 (Dec. 17, 2003) (“[Compliance Rule Adopting Release](#)”) (requiring each adviser to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the adviser’s policies and procedures).

conflicts of interest.⁴ In addition, the staff evaluates whether advisers are accurately calculating and charging clients advisory fees and expenses in accordance with client disclosures.

The staff is issuing this Risk Alert to assist advisers in developing effective compliance programs and disclosures with respect to economic conflicts of interest.

II. Staff Observations from Examinations of Advisers

The Division's review of adviser activities identified economic conflicts of interest that were undisclosed, or the disclosures were incomplete or misleading. The Division also observed adviser practices that were inconsistent with advisory agreements and disclosures. Finally, staff observed compliance programs that did not fully address economic conflicts of interest and risks.

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

The Division observed advisers that recommended programs where clients' uninvested cash was automatically moved into interest bearing accounts ("cash management recommendations"), some of which were held at affiliated parties. Advisers that received revenue in exchange for these cash management recommendations created an economic conflict of interest. As fiduciaries the economic conflict of interest should have been fully and fairly disclosed to clients in order for clients to provide informed consent.⁵ However, the staff encountered the examples below where (1) the fees were inconsistent with advisory agreements and/or disclosures, (2) compliance programs did not fully address economic conflicts of interest, and/or (3) the disclosures were misleading or omitted material information.⁶

Disclosures related to revenue sharing arrangements. The staff observed advisers that omitted material information or provided misleading disclosures regarding revenue sharing arrangements they had with clearing broker-dealers or clients' custodians, including not disclosing:

- Revenue the advisers received from certain custodians based on the cash balances their clients held with those custodians.
- Incentives to recommend cash sweep vehicles that resulted in the greatest possible compensation to the adviser.

The staff also observed advisers that included misleading language in disclosure statements regarding third-party bank cash sweep programs. In these instances, advisers received revenue for client cash balances held in certain third-party bank deposit sweep programs. Rather than

⁴ See [Fiduciary Interp.](#), *supra* note 1, p. 28 ("[W]here an investment adviser cannot fully and fairly disclose a conflict of interest to a client such that the client can provide informed consent, the adviser should either *eliminate* the conflict or adequately *mitigate* (i.e., modify practices to reduce) the conflict such that full and fair disclosure and informed consent are possible.").

⁵ [Id.](#)

⁶ This Risk Alert addresses the application of advisers' duty of loyalty in the context of economic conflicts of interest and circumstances in which advisers did not expose these conflicts of interest through full and fair disclosure. Advisers' fiduciary duty also includes a duty of care that is relevant, though not discussed in this Risk Alert. See [Fiduciary Interp.](#), *supra* note 1, p. 23 ("[W]hile full and fair disclosure of all material facts relating to the advisory relationship or of conflicts of interest and a client's informed consent prevent the presence of those material facts or conflicts themselves from violating the adviser's fiduciary duty, such disclosure and consent do not themselves satisfy the adviser's duty to act in the client's best interest.").

disclosing that the advisers received revenue from such programs, the advisers' disclosures stated that they "may" receive revenue for client cash balances held in these programs.⁷

Disclosures related to fees, expenses, and conflicts of interest. The staff observed advisers that did not fully and fairly disclose the fees, expenses, and conflicts of interest related to the advisers' recommendations of cash management programs. For example, advisers omitted disclosures stating that certain clients' cash balances were subject to the advisers' asset-based fees and/or omitted disclosures regarding the impact fees may have on their investment returns with respect to cash balances (including instances where clients generated negative returns due to the fees and expenses associated with these recommended cash management programs).⁸

Disclosures related to money market fund share class selection. The staff observed advisers that did not make full and fair disclosure to clients regarding the economic benefits the advisers received for their money market fund share class selection recommendations. Examples include (1) advisers that did not disclose that their only cash management recommendations were higher-cost money market funds that engaged in revenue sharing programs with the advisers, as well as (2) advisers that did not disclose that lower-cost shares of the same money market funds were available and that these alternative funds and lower-cost share classes did not provide revenue sharing arrangements with the advisers.

B. Conflicts of Interest Associated with Other Revenue Opportunities

The Division observed advisers that had conflicts of interest related to their selection of mutual fund share classes. The funds' share classes selected for the client by the adviser paid the adviser (as a dually registered broker-dealer), its related entities, or its individual adviser representatives (who were also broker-dealer registered representatives) fees pursuant to Rule 12b-1 under the Investment Company Act of 1940. A conflict existed because a lower-cost share class for the same mutual fund was available to their clients. The staff also observed other compensation, revenue, and economic benefits that caused conflicts of interest for advisers, examples of which are provided below.

Disclosures related to mutual fund share class selection. The staff observed advisers that did not make full and fair disclosure to clients regarding the economic benefits the advisers received for their mutual fund share class selection recommendations outside of the cash management context discussed above.

Disclosures regarding other economic benefits. The staff observed advisers that did not provide full and fair disclosure of the economic benefits to the advisers with respect to the advisers' recommendations regarding custodial credits, margin loans and credits, and transaction markup fees. The staff also observed instances where advisers did not disclose that (1) their broker-dealer affiliates received revenue in connection with interest rate markups on margin loans made by advisory clients, or (2) the advisers received credits for custodial and clearing relationships for

⁷ See [Fiduciary Interp.](#), *supra* note 1, p. 25 ("[D]isclosure that an adviser 'may' have a particular conflict, without more, is not adequate when the conflict actually exists. For example, we would consider the use of 'may' inappropriate when the conflict exists with respect to some (but not all) types or classes of clients, advice, or transactions without additional disclosure specifying the types or classes of clients, advice, or transactions with respect to which the conflict exists. In addition, the use of 'may' would be inappropriate if it simply precedes a list of all possible or potential conflicts regardless of likelihood and obfuscates actual conflicts to the point that a client cannot provide informed consent.").

⁸ *Id.* ("On the other hand, the word 'may' could be appropriately used to disclose to a client a potential conflict that does not currently exist but might reasonably present itself in the future.").

their clients' assets maintained with unaffiliated broker-dealers and the advisers would incur termination fees should they terminate such clearing relationships. Moreover, advisers did not disclose that they assessed additional fees and expenses to clients that were not charged by clearing broker-dealers, including marking up the clearing brokers' fees.

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

Advisers registered with the Commission must provide clients with a narrative brochure that addresses certain minimum requirements (including those related to conflicts of interest arising from advisers' compensation arrangements). An adviser may also use the brochure to satisfy its disclosure obligations as a fiduciary. The staff observed the compensation-related misstatements or omissions examples below during reviews of advisers' brochures prepared pursuant to Part 2A of Form ADV.⁹

Disclosures under Item 10 of the brochure. Advisers must disclose financial industry activities and affiliations under this item; however, the staff observed advisers that did not fully disclose these activities and affiliations. For instance, advisers omitted disclosures regarding material conflicts of interest created through compensation agreements with affiliates (e.g., an affiliated broker-dealer is likely to indirectly benefit through revenue generated by the clearing firms' services performed for advised clients).

Disclosures under Item 12 of the brochure. Advisers must disclose in this item the factors that they consider in selecting or recommending broker-dealers for client transactions and determining the reasonableness of their compensation (e.g., commissions). However, the staff observed advisers that made disclosures under Item 12 that were inconsistent with other disclosures or were incomplete. For instance, advisers that had revenue sharing arrangements with clearing agencies did not disclose all material facts regarding those relationships.

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

The Division observed advisers assessing client advisory fees that were inconsistent with the advisers' agreements, disclosures, or both, including the examples below.

Calculating fees consistent with advisory agreements and disclosures. The staff observed advisory fee calculations that were not aligned with the advisers' disclosures in their Form ADVs and/or the terms in written advisory agreements (e.g., in the initial agreement, in renegotiated fee arrangements, and/or in fee addenda to advisory agreements). Examples of fee calculation inconsistencies include:

- Prorating advisory fees when clients made deposits or withdrawals in their accounts during the billing period, but advisory agreements and disclosures to clients did not address prorating fees in such situations (e.g., adviser disclosed that asset-based fee calculations used clients' account balances at the beginning of the month, but the adviser prorated its fee for a large deposit received mid-month).
- Charging asset-based advisory fees on holdings specifically excluded from the fee billing calculations per advisory agreements (e.g., initial cash inflows and fixed income assets).

⁹ Uniform Application for Investment Adviser Registration and Report for Exempt Reporting Adviser, 17 CFR 279.1.

- Assessing incorrect fee rates to clients and not applying reduced asset-based fee rates for cash and fixed income assets by, among other things, not householding accounts for fee rate breakpoints. Similarly, not identifying fixed income mutual funds as fixed income assets, which were subject to a lower asset-based fee rate than the assessed rates.
- Not rebating certain transaction fees (e.g., mutual fund transaction fees), even though advisory agreements specifically state that clients would not incur any fees for such transactions.

Calculating fees consistent with services actually provided. The staff observed advisers that assessed fees to clients for services not provided or assessed higher fees than agreed to for the services that were provided, including charging clients:

- Fees for wealth management and advisory services that the advisers did not provide because the personnel managing the accounts departed and the accounts were not reassigned to remaining advisory personnel (*i.e.*, unearned advisory fees).
- Advisory fees on inactive accounts that were not provided with any supervisory or management services, including instances where these inactive accounts predominantly held cash and remained open after the clients requested, in writing, to close their accounts.
- Advisory fees more than once for the same services, including instances that were the result of internal asset transfers (*i.e.*, duplicative billing).

Refunding unearned fees. The staff observed advisers that did not issue refunds to clients who were billed in advance and terminated their agreements with the advisers prior to the end of the billing period. This included instances where the clients had not provided the advisers with *written* notice that they were seeking refunds of their advisory fees upon termination of their advisory contracts.

E. Compliance Programs Identifying and Addressing Fee-Related Issues

The Division observed instances where advisers did not appear to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder consistent with the nature of the advisers' operations.¹⁰ Specifically, the written policies and procedures did not indicate how the advisers' would execute their various billing practices accurately and in a manner that was consistent with their fiduciary obligations, advisory agreements, and disclosures. Examples are provided below.

Addressing all types of billing arrangements. The staff observed instances where advisers did not fully address in their policies and procedures the billing arrangements applicable to their clients, such as prepaid fees, fee reductions (*e.g.*, householding of accounts), and margin on client accounts.

Describing advisory fee-related practices clearly and consistently. The staff observed advisers that adopted compliance policies and procedures, provided clients with disclosures, and signed client agreements that contained conflicting information regarding fees (*e.g.*, information

¹⁰ See [Compliance Rule](#) and [Compliance Rule Adopting Release](#), *supra* note 3.

regarding the advisers' ability to directly withdraw advisory fees from clients' accounts). These documents also contained schedules or narratives that were inconsistent, disclosures to clients that were overly complicated or difficult to reconcile with other related disclosures, or both.

Monitoring for accurate fee-billing. The staff observed advisers that lacked controls regarding monitoring for accurate calculations when billing client fees and applying rebates, resulting in clients being overcharged for advisory fees. Examples include not addressing controls to:

- Monitor for the accuracy of *all* types of client fees assessed.
- Facilitate the accurate calculation of fees, such as establishing procedures to test for calculation errors (*e.g.*, to identify manual input errors when calculating prorated fees).
- Evaluate whether rebates and refunds were issued to terminated accounts, including validating that the adviser did not continue charging advisory fees to clients who terminated their relationships with the advisers.

III. Conclusion

The staff continues to observe compliance issues when advisers have economic conflicts of interest with their clients. This topic has been, and continues to be, an area that warrants routine review by the staff during adviser examinations. The staff's observations and examination findings often have led to advisers returning money owed to clients due to fee billing and calculation errors. In addition, advisers have improved the clarity of their disclosures, the accuracy and consistency of their billing practices, and the effectiveness of their compliance programs in response to examinations.

The Division encourages advisers to review and refine, as appropriate, their billing policies, procedures, and practices on a routine basis with an eye towards ensuring they are accurate and consistent with disclosures and agreements. Advisers should also identify and address timely new conflicts of interest. In addition, advisers are encouraged to review their disclosures regarding their economic conflicts of interest to ensure that clients are provided with full and fair disclosure.

This Risk Alert is intended to highlight for firms risks and issues that Division staff has identified. In addition, this Risk Alert describes risks that firms may consider to: (1) assess their supervisory, compliance, and/or other risk management systems related to these risks, and (2) make any changes, as may be appropriate, to address or strengthen such systems. Other risks besides those described in this Risk Alert may be appropriate to consider, and some issues discussed in this Risk Alert may not be relevant to a particular firm's business. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.
