

Special Alert

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Division of Examinations Shares Observations for Conflicts of Interest



The SEC Division of Examinations issued a Risk Alert on June 9, 2026, providing the Division's observations regarding advisers' obligations relating to conflicts of interest disclosures. Specifically, the Division addresses observations relating to conflicts and disclosures related to cash management recommendations and other revenue opportunities. The Division also addresses deviations from advisory agreements and Form ADV disclosures as related to fee billing.

Conflicts of Interest Associated with Advisers' Cash Management Recommendations

The Division observed advisers automatically placing clients' uninvested cash into interest bearing accounts, some of which were held with parties affiliated with the adviser. These "cash management

recommendations” generated revenue for the adviser and created undisclosed conflicts of interest. The Division reported that in some cases, the advisers:

- Charged fees inconsistent with disclosures or agreements
- Had inadequate compliance programs to address these conflicts
- Provided misleading or incomplete disclosures, omitting important information

Full and fair disclosure of a conflict of interest must include all material facts relating to the advisory relationship and the conflicts of interest. It is required in order to obtain informed consent from a client. The Division notes that while full and fair disclosure prevents advisers from breaching their duty as a fiduciary, such disclosure and informed consent is not inherently sufficient to satisfy the adviser’s duty to act in the client’s best interest.

Disclosures related to revenue sharing agreements

The Division notes several advisers omitted material information regarding revenue-sharing arrangements with broker-dealers and/or custodians relating to:

- Revenue received by advisers from custodians based on clients’ cash balances
- Incentives to recommend certain cash sweep vehicles.

The Division also observed misleading language in disclosure statements. The disclosures stated that advisors “may” receive revenue from a revenue sharing arrangement even when the adviser determined it did receive said revenue. However, the Division notes that disclosures stating that an adviser “may” have a conflict is sufficient when the conflict does not currently exist but might present itself in the future.

Disclosures related to fees, expenses, and conflicts of interest

The Division found advisers did not disclose material details about cash management programs. Specifically, they failed to clearly explain:

- That cash balances could still be subject to asset-based advisory fees
- How advisory fees may impact clients’ investment returns, including losses that clients may have incurred due to expenses associated with the recommended cash management programs.

Disclosures related to money market share fund selection

The Division also found advisers failed to fully and clearly disclose to clients any conflicts related to money market fund selections, including:

- Recommending higher-cost funds that generated revenue sharing benefits for the adviser without clearly disclosing this incentive
- Failing to disclose that lower-cost share classes or alternative funds were available and that the lower-cost options did not provide revenue arrangements with the advisers.

Conflicts Of Interest Associated with Other Revenue Opportunities

Conflicts observed by the Division were not limited to cash management recommendations. The Division highlights advisers that created conflicts of interest by selecting mutual fund share classes for clients that paid the adviser, its affiliates, and/or its individual investment adviser representatives fees under Rule 12b-1 of the Investment Company Act of 1940. In these cases, the advisers and their representatives were dually registered broker-dealers.

Disclosures related to mutual fund share class review

The Division observed that the same failure to provide full and fair disclosure also occurred in relation to mutual fund share class selection.

Disclosures regarding other economic benefits

The Division also observed advisers failed to fully disclose conflicts related to custodial arrangements, margin lending, and transaction fees, including:

- Not disclosing that affiliate broker-dealers earned revenue from interest rate markups on margin loans
- Not disclosing the receipt of custodial or clearing credits tied to client assets, or that advisers might face termination fees if they changed clearing relationships
- Charging clients additional or marked-up fees beyond what clearing brokers charged.

Disclosing Fees and Economic Conflicts of Interest in Form ADV

An adviser is able to provide sufficient disclosures to fulfil its fiduciary duty in its Form ADV Part 2A. The Division observed the following omissions or misstatements during reviews of advisers' brochures:

- Under Item 10, the Division noted that several advisors failed to disclose material conflicts of interest related to compensation of industry affiliates, such as broker-dealers.
- Under Item 12, advisers are required to disclose the factors they consider when selecting or recommending broker-dealers to clients and determining whether the compensation arrangements were reasonable. The Division provides an example where advisers had revenue-sharing agreements with clearing agencies while omitting material facts about the arrangements.

Fees Deviating from Advisory Agreements and Fee-Related Disclosures

The Division also provided examples of advisers charging fees inconsistent with the advisers' agreements, disclosures, or both.

Calculating fees consistent with advisory agreements and disclosures

The Division observed advisers:

- Charging prorated advisory fees when said fees were not disclosed to clients.
- Charging asset-based fees on holdings excluded from billing as described in the client's advisory agreement (e.g. fixed income assets)
- Charging higher-than-appropriate fees by not applying reduced rates for certain assets
- Failing to house account to qualify clients for lower breakpoint fees
- Not rebating certain transaction fees when the client's advisory agreement stated the clients would not be charged.

Calculating fees consistent with services actually provided

The Division also observed advisers that charged fees:

- For wealth management services the advisor did not provide
- On inactive and/or unsupervised accounts, including some that clients had requested to be closed and held only cash
- More than once for the same services

Refunding unearned fees

The Division also highlighted advisers that did not issue refunds to clients billed in advance who terminated their agreement with the advisers, including when the client did not specifically request a refund.

Compliance Programs Identifying and Addressing Fee-Related Issues

The Division found that some advisers lacked adequate written policies and procedures to ensure compliance with the Advisers Act. In particular, their policies did not clearly explain how billing practices would be carried out accurately and in alignment with the adviser's fiduciary duty, advisory agreements, and disclosures.

Addressing all types of billing arrangements

Some written policies and procedures reviewed by the Division failed to address all applicable billing arrangements, including prepaid fees, fee reductions, and margin on client accounts.

Describing advisory fee-related practices clearly and consistently

The Division reported that some advisers' policies and procedures contained inconsistent, overly complicated, and conflicting information regarding client fees, including regarding the adviser's ability to directly debit fees from the client accounts.

Monitoring for accurate fee-billing

Lastly, the Division observed advisers lacked adequate controls and oversight for fee billing and rebates, which led to clients being overcharged. Specifically, they failed to:



- Monitor the accuracy of fees charged to clients
- Implement procedures to detect calculation errors (e.g., manual input mistakes in prorated fees)
- Ensure rebates or refunds were properly issued to terminated accounts
- Prevent continued fee charges after clients terminated their advisory relationship

Following is the link to the SEC's risk alert: <https://www.sec.gov/compliance/risk-alerts/exams-observations-ia-obligations-related-economic-conflicts-interest-060926>

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