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SEC Division of Examinations Highlights Deficiencies in Advisers' Management and Disclosure of Economic Conflicts of Interest

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On June 9, 2026, the Securities and Exchange Commission's ("***SEC***") Division of Examinations ("***Division***") issued a risk alert ("***Risk Alert***") summarizing examination findings concerning SEC-registered investment advisers' duty to address economic conflicts of interest. The Risk Alert focuses on financial incentives that may affect an adviser's recommendations of particular products, services, custodians, account structures or fee arrangements, and identifies recurring deficiencies in advisers' disclosures, billing practices and compliance programs.

The Risk Alert underscores the SEC staff's continued focus on whether advisers are providing full and fair disclosure of material conflicts and maintaining compliance programs reasonably designed to address those conflicts. The Division observed undisclosed or inadequately disclosed economic conflicts, practices inconsistent with client agreements and disclosures, and compliance programs that did not fully address conflict-related risks. Consistent with Supreme Court precedent and other SEC guidance, advisers must either eliminate conflicts or clearly disclose them so that clients can provide informed consent. Generic or incomplete disclosures remain a key examination concern, particularly where they describe a practice as something that "may" occur when the adviser knows it is already occurring, or where they obscure economic incentives that could cause the adviser to render advice that is not disinterested.

Practical Considerations for Investment Advisers

- **Review economic conflicts holistically.** The Risk Alert provides a useful roadmap for advisers evaluating whether their disclosures, policies, and controls adequately address economic conflicts and fee-related practices. Advisers should consider taking a fresh look at compensation arrangements and other economic incentives to confirm that material conflicts, benefits received, and reasonably available alternatives are clearly and fairly disclosed to clients.

- **Align disclosures with actual practices.** Advisers should evaluate whether their Form ADV brochures and client-facing disclosures are consistent with advisory agreements, internal policies, and operational practices. Disclosure must be clear and detailed enough for a client to make an informed decision to consent, and the Risk Alert cautions that generic or hypothetical conflict disclosure may be insufficient when the conflict is already present or the adviser is actually receiving compensation, emphasizing the need to review the adviser's actual business practices and confirm they are clearly disclosed.
- **Test fee billing and related controls.** The Division's fee billing observations underscore that accurate disclosures must be matched by reliable billing operations. Advisers should consider reviewing whether their fee calculation methodologies, valuation inputs, discounts, rebates, refunds, and termination procedures are working as intended, and whether compliance controls are reasonably designed to detect overbilling, duplicative charges and missed credits.
- **Prepare for continued examination scrutiny.** More broadly, the Risk Alert signals that economic conflicts, fees and expenses, and related compliance controls are likely to remain areas of SEC examination focus. Advisers should consider whether their policies are tailored to their business model and provide a workable framework for identifying, escalating, disclosing, and mitigating conflicts, and disclosures, agreements, policies, and operational controls work together in practice.

The Risk Alert's detailed observations, summarized below, illustrate how these issues are arising in practice and highlight specific areas where the Division continues to identify deficiencies.

Cash Management

The Division observed that some advisers failed to provide full and fair disclosure regarding economic conflicts tied to cash management recommendations. In particular, SEC staff identified inadequate disclosure where advisers received revenue-sharing payments from custodians, clearing firms, or third-party bank sweep programs based on client cash balances, as well as failures to disclose incentives to recommend cash management options that generated higher compensation for the adviser.

In addition, the Division continued its scrutiny of "may" disclosures, criticizing language suggesting advisers *may* receive compensation when such payments *were* in fact being received. This reinforces the SEC staff's view that disclosures must reflect actual practices rather than hypothetical possibilities.

Revenue from Other Sources

Beyond cash management arrangements, the Risk Alert highlights several additional sources of adviser compensation and economic benefit that may give rise to conflicts of interest. The Division observed disclosure deficiencies involving mutual fund share class selection, including where advisers (or their affiliates or representatives) received Rule 12b-1 fees despite the availability of lower-cost share classes of the same funds, which the Division (along with the Division of Enforcement) has treated as a priority for nearly a decade.

The Division also identified inadequate disclosure of other economic benefits tied to custodial credits, margin loans and credits, and transaction markups. These included failures to disclose revenue received by broker-dealer affiliates in connection with interest rate markups on advisory clients' margin loans, credits received through custodial and clearing relationships, termination fees that could result from ending those relationships, and additional client fees or markups imposed by advisers beyond amounts charged by clearing broker-dealers.

Form ADV Disclosure

The Risk Alert identified compensation-related misstatements and omissions in advisers' Form ADV Part 2A brochures. Form ADV disclosures should accurately reflect advisers' compensation arrangements, affiliations, and related economic conflicts. In particular, the Division observed deficiencies in disclosure concerning financial industry activities and affiliations, including failures to disclose material conflicts arising from compensation arrangements with affiliates, as well as disclosure relating to the selection of broker-dealers and clearing agencies.

Fee Billing Practices

The Risk Alert also calls attention to deficiencies involving advisory fee calculations and billing practices. SEC staff observed instances where advisers charged fees that were inconsistent with agreements and disclosures, including by applying incorrect fee rates, using inaccurate account values, or failing to apply agreed-upon discounts, breakpoints, and rebates. The Division also identified deficiencies where advisers charged clients for services that were not provided, engaged in duplicative billing, or failed to refund unearned prepaid fees after account termination.

Tailoring Compliance Programs

The Division noted that advisers' written policies and procedures should be reasonably designed to prevent violations of the Investment Advisers Act of 1940 and the rules thereunder and should be tailored to the nature of the adviser's operations, and identified weaknesses in advisers' compliance programs that failed to adequately address conflicts and fee-related risks. Some advisers' compliance policies and procedures did not adequately address fee billing practices, including prepaid fees, fee reductions, and margin in client accounts. SEC staff also identified inconsistencies among policies, agreements, and disclosures, as well as insufficient controls to monitor fee calculations, test for billing errors, and confirm that rebates, refunds, and post-termination fee cessation were properly applied.

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