Gottschall in Ignites: RIA, Former CEO to Pay SEC $2M Over Conflicts of Interest, Personal Trading

June 15, 2026

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The Securities and Exchange Commission recently settled charges against an investment management firm and its former CEO over alleged conflicts of interest, compliance failures and personal trades.

Haynes Boone Partner **Kurt Gottschall** spoke with *Ignites* about the settlement, noting that the case reflects a familiar enforcement theme rather than a shift in direction. He added that the SEC continues to prioritize conflicts of interest and compliance failures where firms have overlapping advisory and product relationships.

Read an excerpt below:

By this enforcement action, the SEC is "once again signaling that in any administration, conflicts of interest and compliance rules will continue to attract enforcement interest in the right circumstances," said Kurt Gottschall, partner at Haynes Boone and chair of the firm's nationwide SEC enforcement defense practice group. He added, "I don't think the SEC is really breaking any new ground here."

Referring to the expense-sharing agreement conflict, "Any time you have an arguable financial incentive to recommend a proprietary product over a nonproprietary product, the SEC is going to expect that those conflicts are disclosed," Gottschall said.

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The SEC framed these actions as a fiduciary breach, which Gottschall noted as "the most unusual portion of this order." Rice acknowledged in contemporaneous text messages that his end-of-day trading was "due to his concern about the bid-ask spread and performance of the ETF in client portfolios," according to the order.

"Typically when we see the SEC make allegations about the last trade of the day, usually those cases are for manipulative activity for individual equity securities. It's relatively rare for the SEC to allege that for an ETF. I think the key here was that the SEC concluded that Rice did not financially benefit from this trading ... the SEC appears to have framed it based on the allegation that Foundations and Rice deceived those clients as to the end-of-the-day price of the ETF," said Gottschall.

To read the full *Ignites* article, click **here**.

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