SEC Division of Investment Management Issues Guidance on Personal Trade Reporting of Accounts Over Which Reporting Persons Have No Influence or Control

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Under Rule 204A-1 of the Investment Advisers Act of 1940, a registered investment adviser's written code of ethics must include requirements for reporting of personal securities holdings and trading activity by the adviser's directors, officers, partners and other supervised persons having access to non-public information regarding securities transactions (together "access persons"). Subsection (b)(3)(i) of the Rule provides an exception to the reporting requirements when an access person's securities are held in accounts over which he or she had "no direct or indirect influence or control." For example, an access person may avail itself of the reporting exception in the case of a blind trust, in which a trustee manages funds for the benefit of such access person who has no knowledge of the specific management actions taken by the trustee and no right to intervene in the trustee's management.

The SEC staff noted, however, that it has encountered several other instances in which advisers and their access persons have asserted the reporting exception with respect to trusts and accounts in which the applicable access person has granted to a third party discretionary authority over the underlying assets. In this guidance, the SEC clarifies that the mere fact that an access person has a trustee or third-party manager who has management or investment authority over an access person's trust or personal account, would not, by itself, enable an adviser to rely on the reporting exception. Specifically, the staff noted that, while an access person relying on the exception may engage in discussion to receive information from the trustee or third-party manager, other communications, such as providing directions or suggestions for investments by the trustee or third-party manager, could result in influence or control that would render the exception unavailable.

To rely on the reporting exception, the SEC staff recommended that advisers implement policies and procedures that can help evaluate whether an access person actually had direct or indirect influence or control over the trust or account. The staff suggested the following considerations for investment advisers:

- Obtaining information about the nature of the relationship between an access person and his or her trustee and/or third-party managers (e.g. independent profession versus friend or family; unaffiliated versus affiliated firm);
- Obtaining periodic certifications (must be specific, not general) by access persons and their trustees or discretionary third-party managers regarding the access persons' influence or control over trusts or accounts using explicit questions regarding specific circumstances;
- Providing access persons with the exact wording of the reporting exception and a clear definition of "no direct or indirect influence or control" that the adviser consistently applies to all access persons; and
- Requesting reports on holdings and/or transactions made in the trust or discretionary account to identify transactions that would have been prohibited pursuant to the adviser's code of ethics, absent reliance on the reporting exception.

Advisers should closely examine the facts and circumstances of any account for which their access persons are claiming the reporting exception in order to evaluate compliance with Rule 204A-1 in light of this guidance. The full text of the June 2015 IM Guidance Update is **available here**.

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