

SEC Division of IM Issues Guidance Update on Personal Securities Transactions

On June 26th, the Securities and Exchange Commission's Division of Investment Management issued IM Guidance Update No. 2015-03 titled, "Personal Securities Transactions Reports by Registered Investment Advisers: Securities Held In Accounts Over Which Reporting Persons Had No Information or Control." As its name suggests, the update deals with the reporting exception in subsection (b)(3)(i) of Rule 204A-1 to the rule's general requirement that an access person report their personal securities holdings and transactions (the "Reporting Exception"). In summary, the update establishes the principle that an access person's personal account will not be considered to be an account over which such person has "no direct or indirect influence or control"—and thus qualify for the Reporting Exception—on the sole basis that a third-party manager has discretionary investment authority over that account. In particular, the update provides that the adviser could:

- Obtain information about a trustee or third-party manager's relationship to the access person (i.e., independent professional versus friend or relative; unaffiliated versus affiliated firm);
- Obtain periodic certifications by access persons and their trustees or discretionary third-party managers regarding the access persons' influence or control over trusts or accounts;
- Provide 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
- On a sample basis, 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.

Further, the update emphasizes that an adviser should obtain specific certifications, rather than general certifications, from an access person in order to establish that the person did not exercise influence or control over an account. The following are representative examples of these certifications:

- "Did you suggest that the trustee or third-party discretionary manager make any particular purchases or sales of securities for account X during time period Y?"
- "Did you direct the trustee or third-party discretionary manager to make any particular purchases or sales of securities for account X during time period Y?"
- "Did you consult with the trustee or third-party discretionary manager as to the particular allocation of investments to be made in account X during time period Y?"

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