

Personal trading policies for hedge fund managers

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Abstract

Purpose – To provide a detailed description of personal trading policies that apply to hedge fund managers.

Design/methodology/approach – Summarizes Sections 206(1) and (2) of the Investment Advisers Act of 1940 (“Advisers Act”), particularly with regard to disclosure of conflicts relating to personal trading and prevention of misappropriation of investment opportunities; summarizes Section 204A of the Advisers Act, including procedures designed to prevent the misuse of public information; and summarizes Rule 204A-1 under the Advisers Act, which requires a registered investment adviser to adopt a code of ethics applicable to its supervised persons.

Findings – Advisers must adopt insider trading policies, ensure clear and accurate disclosures about personal trading in their Forms ADV and private placement memoranda, and adopt and enforce codes of ethics. It is also beneficial for an adviser to require its employees to trade only through an affiliated broker-dealer.

Originality/value – Provides a detailed discussion of personal trading policies that apply to hedge fund managers.

Keywords Fund management, Legislation, Managers

Paper type Technical

Investment advisers are fiduciaries and owe their clients a duty of loyalty[1]. Whether their clients are funds, institutions or individuals, advisers must place their clients’ interests above their own, especially when making investment decisions affecting their personal accounts. In addition to the federal securities law provisions governing insider trading by all market participants[2], investment advisers are subject to specific rules governing their personal trading. The Investment Advisers Act of 1940 (“Advisers Act”) addresses insider trading by prohibiting advisers from engaging in fraudulent conduct, which can include failing to disclose certain personal trading practices and appropriating investment opportunities that belong to clients. Section 204A of the Advisers Act requires advisers to establish, maintain and enforce written procedures to prevent the misuse of nonpublic information by the advisers’ associated persons. Rule 204A-1 under the Advisers Act requires registered advisers to adopt codes of ethics. The codes of ethics must set forth standards of conduct for advisory personnel and address conflicts arising from personal trading by advisory personnel[3]. In short, advisers must ensure that they clearly disclose conflicts to clients, and adopt, maintain, and enforce insider trading policies and codes of ethics.

Sections 206(1) and (2)

Disclosure of conflicts relating to personal trading

Section 206 of the Advisers Act contains a general antifraud provision that prohibits an adviser from using any scheme or device, or engaging in any practice or transaction, to

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defraud a client or potential client. There is no requirement that the scheme or practice occur in connection with the purchase or sale of a security. The SEC has sanctioned several advisers for failing to disclose to clients the conflicts presented by access persons' personal trading.

For example, in the *Strong* case[4], an adviser to registered funds had disclosed in its Form ADV that neither the adviser nor its employees would invest in securities recommended to clients. The SEC alleged that the adviser's president nevertheless traded in securities of at least three issuers on at least 30 occasions, at or near the time when the adviser recommended those securities to clients. The adviser also allegedly failed to disclose that its management had significant interests in an offshore fund for which the adviser served as sub-adviser, that on 45 occasions the offshore fund traded with other clients of the adviser, and that this practice created a conflict of interest. The SEC asserted that these omissions violated Sections 206(1) and (2) of the Advisers Act. The adviser consented to a censure and detailed undertakings, including the creation of a personal trading policy and internal controls. The lesson from the *Strong* case is twofold: an adviser should monitor the accuracy of its disclosures about personal trading, and it should consider whether any fund in which it or its personnel has an interest should be deemed an account subject to personal trading rules.

In the *Chancellor* case[5], the SEC alleged that the adviser violated Section 206(2) by failing to disclose a conflict of interest arising from the fact that a portfolio manager was offered the opportunity to invest in non-public stock in return for advice to the company's founder, and by failing to notify its clients that it would recommend to them securities of companies that Chancellor's related persons previously had purchased in non-public transactions. The SEC went one step further and alleged a violation of Section 207[6] because Chancellor allegedly had failed to disclose on its Form ADV that it or its related persons could invest in non-public stock that the adviser could later recommend to clients. While the manager had pre-cleared these purchases with the adviser's general counsel, the practice of portfolio managers investing in private placements and later recommending the same securities to clients had not been disclosed to clients. Advisers should be aware that a pattern of unusual personal trades, even if pre-cleared, may need to be disclosed to clients if the trades create any conflict of interest.

Prevention of misappropriation of investment opportunities

The SEC has elaborated on the meaning of an adviser's duty of loyalty to clients in several enforcement actions when an adviser took for itself an investment opportunity that allegedly belonged to clients. The message articulated by the SEC is that before an adviser decides to engage in a personal trade in a "scarce" security that may be appropriate for a client, it must disclose to the client its intent to invest in that security and obtain the client's consent. When the client is a fund, a disinterested person (such as another manager) should determine whether to approve the proposed trade.

The SEC actions brought thus far have involved investment opportunities of limited availability. For example, in the *Conan* case[7], a manager bought from Drexel Burnham Lambert debt securities issued by Champion Parts, Inc. for three unregistered investment funds she managed. In that same offering, Champion had offered warrants to purchase common stock, which were not listed. Conan learned of the warrants in doing research for the funds, and purchased 50,000 warrants from Drexel for \$12,500 for her own account. She sold the warrants a month later for \$225,000. The warrants were never listed, there was no active market for them, and they were not readily available to the public. The Champion warrants offered holders the option of paying the exercise price by surrendering the Champion debt securities, which would be valued at par. At the time Conan bought the warrants, the debt securities were trading below par. If Conan had bought the warrants for the funds, the funds would have benefited by surrendering the debt securities and the warrants and obtaining common stock at an advantageous price. The funds were not prohibited from buying warrants and were financially able to buy them.

Although her employer required pre-clearance and reporting of personal trades, Conan did neither. No disinterested person of the adviser could determine whether the funds, or any other advisory clients, should purchase the warrants[8]. The SEC charged that Conan violated the antifraud provisions of the Advisers Act and the Exchange Act by favoring herself over the funds and violated the recordkeeping provisions of the Advisers Act by failing to report the purchase and sale of the warrants[9], and barred her from the securities business.

The SEC order instructs advisers how to handle these situations. When an adviser learns of an investment opportunity not generally available that would be appropriate for any client, and in which the client is legally and financially able to invest, the adviser commits fraud if it invests in that opportunity without first disclosing the opportunity to the client (or a disinterested rep-representative) and obtaining the client's prior or subsequent consent to the adviser's investment[10]. The problem advisers face in these situations is that many advisory accounts have broadly worded investment objectives, and it would be difficult to conclude that an opportunity is inappropriate for such accounts. Further, if an adviser drafts restrictive investment objectives for an advisory account, this action may not be in the best interests of the client. The Conan order seems to require advisers to find disinterested representatives on a regular basis or, alternatively, to deny these requests.

In a similar case, *Embry*[11], an adviser retained the equity "kickers" offered in two private placements of debt securities in which he invested client assets. The adviser did not disclose the availability of the kickers, or his purchase, to clients; the SEC alleged that this conduct violated Sections 206(1) and (2)[12]. Finally, in the *Kemper* case[13], the SEC alleged that the adviser violated Section 206(2) in allocating to the plan the kickers that "belonged" to the funds, without disclosing all material facts to the funds and obtaining their consent, and that the manager aided and abetted this violation and caused the adviser to violate Section 206(2).

Because there is little guidance to determine when an investment opportunity is scarce or is not generally available to the investing public, advisers should consider, at a minimum, disclosing any policy they have on investing for their own accounts (but not for their clients' accounts) and any policy that permits their portfolio managers or other access persons to participate in IPOs, private placements and hot issues.

Section 204A – Adoption of Procedures Reasonably Designed to Prevent Misuse of Nonpublic Information

Section 204A of the Advisers Act requires a registered investment adviser to establish, maintain and enforce written policies reasonably designed to prevent the misuse, by the adviser or its associated persons, of material non-public information. Advisers whose officers, directors or employees have outside business interests should review their policies and procedures to ensure that their codes adequately address any conflicts those activities may present.

An insider trading policy should define what "insider trading" is, and give examples. It should inform employees of what activities are prohibited when an employee learns of material non-public information, such as tipping or trading on the information for the employee's or a client's account. The policy should instruct employees to report this knowledge to legal or compliance personnel. It should also contain procedures designed to safeguard material non-public information within the firm and prevent its release to others. Finally, the policy should inform employees of the severe sanctions within the firm and by regulators for violations of insider trading laws.

In 1994, the SEC sanctioned Gabelli & Company, Inc., a registered broker-dealer, and GAMCO Investors, Inc., a registered investment adviser under common control with Gabelli & Company, alleging that their policies and procedures did not expressly address the issues raised by the outside employment of Mario Gabelli, the *de facto* chief investment officer of Gabelli & Company and the chief investment officer of GAMCO[14]. Mario Gabelli also served as the chairman and chief executive officer of a public company. The adviser's and

broker-dealer's policies prohibited insider trading; required employees to report to counsel their possession of material non-public information; imposed a three-day trading blackout period on advisory and broker-dealer personnel after certain events or trades in the public company's stock; and required a restricted list to be compiled and maintained that depended, in part, on self-reporting.

The SEC charged that Mario Gabelli received material non-public information in his role as chairman of the public company and that when he traded in that company's stock, there was inadequate objective review to determine whether, at the time, he possessed non-public information. The SEC also alleged that the restricted list was not effective to deter misconduct because it depended in part on self-reporting and communications from the public company as to certain events (such as an imminent earnings release), and that in practice the company was rarely placed on the list. The SEC concluded that the adviser's policies and procedures were inadequate to prevent the misuse of non-public information in violation of Section 204A and Section 15(f) of the Exchange Act^[15], imposed a fine on the adviser and broker-dealer, and required the entities to undertake remedial procedures.

Allocations and personal trading

The SEC staff issued a no-action letter in 1995 that permitted an adviser (SMC Capital), whose clients included registered funds, individuals, employee benefit plans, private investment companies and insurance company separate accounts, to aggregate ("bunch") client orders with orders for accounts in which SMC personnel had an interest^[16]. The SEC response permitted the adviser to treat as a "client" any collective investment fund in which the adviser or its employees had an interest^[17]. The response contained a detailed list of conditions to which SMC must adhere, including disclosure to clients of its aggregation policies, pre-allocation of orders and the equitable treatment of all "clients" (including the accounts in which the adviser or its employees had an interest). The response also permitted the adviser to allocate to its own account a pro rata share of a partial order, even if its clients did not receive the full amount of securities ordered for their accounts. The letter was issued under Section 17(d) of the Investment Company Act of 1940 ("Investment Company Act"), the prohibition against joint transactions and Section 206 of the Advisers Act. As the Advisers Act has no prohibition against joint transactions, hedge fund advisers presumably had been permitted to bunch client and employee or proprietary accounts, with appropriate disclosure.

The interaction between the SMC letter and an adviser's code of ethics is unclear. As discussed earlier, the SEC has long held the view that an adviser's personal trading at or near the time of a client's trade in the same security is a potential conflict of interest, and has urged funds and advisers to consider this conflict in drafting and maintaining personal trading policies. Some advisers impose a blackout period on access persons' personal trading while clients are trading in the same security. Permitting fund or advisory personnel to circumvent a blackout period by placing their personal orders on the same ticket as their clients' trades would not appear to negate the appearance that these persons may be favoring themselves over clients. In addition, the SMC letter would appear to permit advisers to participate in any type of bunched trade involving publicly traded securities, including IPOs, although Rule 204A-1 (discussed below) requires that personal trades in IPOs be pre-cleared.

Moreover, the SEC's concerns in the *Conan* and *Embry* cases, when advisers allegedly misappropriated scarce investment opportunities, could be present when an adviser bunches its own account with client accounts, fails to receive the full amount of securities ordered or sold, and allocates some of the trade to its own account while clients do not receive or sell the full amounts of their orders. Although it could be asserted that the adviser may address this issue by disclosing in its Form ADV that the adviser may allocate to itself or its employees certain scarce opportunities that it also allocates to its clients, the SEC's orders in the *Conan*, *Embry* and *Kemper* cases did not suggest that Form ADV disclosure could serve as a blanket consent by clients to this practice. Rather, those orders suggest that an adviser that seeks to appropriate to itself an investment opportunity not generally

available to its clients (securities in an IPO at the initial offering price, for example) must disclose its interest in acquiring the securities to the client (or a disinterested representative) and obtain consent, on a trade-by-trade basis.

The SMC letter appears to dilute partially the effect of the *Conan* case. If an adviser has written allocation procedures that permit the adviser or its access persons to trade alongside clients and such trading may result in partially excluding clients from scarce investment opportunities, such as hot IPOs, and the adviser discloses its allocation procedures to clients, then the adviser need not follow the course of action suggested in the *Conan* case, i.e. disclose the conflict and obtain the client's or a disinterested representative's consent before participating in a limited opportunity.

Rule 204A-1 – Adviser Codes of Ethics

Rule 204A-1 under the Advisers Act requires a registered investment adviser to adopt and enforce a code of ethics applicable to its supervised persons. The rule, adopted in 2004, essentially treats non-fund advisers in the same manner that fund advisers and their personnel are treated under Rule 17j-1 under the Investment Company Act.

Who is covered?

There are two types of advisory personnel defined in the rule: supervised persons and access persons.

Supervised persons are an adviser's partners, officers, directors (or other persons occupying a similar status or performing similar functions) and employees, as well as any other persons who provide advice on behalf of the adviser and are subject to the adviser's supervision and control^[18].

Access persons are an adviser's supervised persons who have access to non-public information regarding clients' purchases or sales of securities, are involved in making securities recommendations to clients, or have access to such recommendations that are non-public.

Rule 204A-1 presumes that all of an adviser's officers, directors and partners are access persons if the firm's primary business is providing investment advice. Access persons typically include portfolio managers, analysts and representatives who discuss investments with clients. Other employees may be access persons if their job duties give them access to non-public information and securities trades or recommendations. In adopting Rule 204A-1, the SEC stated that the number of access persons within an organization may be limited where the organization institutes information barriers or other strict controls on sensitive information.

What must be in the code?

An adviser is free to create its own code of ethics taking into consideration the nature of its business. However, the code must include, at a minimum, the following provisions:

1. *Standards of business conduct.* An adviser's code of ethics must establish standards of conduct that are expected of the adviser's supervised persons and that reflect the adviser's fiduciary duties. Supervised persons must acknowledge, in writing, receipt of a copy of the code of ethics and any amendments. While the rule does not mandate employee training, it is a recommended practice.
2. *Compliance with Federal Securities Laws.* An adviser's code of ethics must require the adviser's supervised persons to comply with applicable federal securities laws.
3. *Personal Securities Reporting.* An adviser's code of ethics must require access persons to report their personal securities holdings and transactions, including transactions in mutual funds advised by the adviser or an affiliate of the adviser.
4. *Initial and Annual Reports.* Each access person must submit a complete report of his or her reportable securities holdings, at the time the person becomes an access person and at least once a year thereafter.

5. *Quarterly Reports.* The code of ethics also must require quarterly reports of all access persons' transactions in reportable securities, which are due no later than 30 days after the close of the calendar quarter. The code of ethics may excuse access persons from submitting transaction reports that would duplicate information contained in trade confirmations or account statements that the adviser receives and retains, so long as the adviser has received those confirmations or statements not later than 30 days after the close of the calendar quarter in which the transaction takes place.
6. *Reportable Securities.* Virtually all securities are "reportable securities"[19], including shares of registered open-end funds managed by the adviser, or whose investment adviser or principal underwriter controls, is controlled by or is under common control with the adviser[20].
7. *Exceptions to Reporting.* No reports are required for transactions effected pursuant to an automatic investment plan; for securities held in accounts over which the access person had no direct or indirect influence or control; or, in the case of an advisory firm that has only one access person, so long as the firm maintains records of the holdings and transactions that Rule 204A-1 would otherwise require be reported.
8. *Pre-approval of Certain Transactions.* An adviser's code of ethics must require access persons to pre-clear any personal investments in initial public offerings and limited offerings[21].
9. *Reporting of Code Violations.* An adviser's code of ethics must require supervised persons to report, promptly, any violations of the adviser's code of ethics to the firm's chief compliance officer or to other designated persons.
10. *Recordkeeping.* Rule 204-2(a)(12) and (a)(13) requires advisers to keep the following records:
 - copies of their codes of ethics;
 - records of violations of the code and actions taken as a result of the violations (however, advisers are not required to keep records of internal reports of code violations);
 - copies of their supervised persons' written acknowledgments of receipt of the code;
 - records of the names of their access persons;
 - the holdings and transaction reports made by access persons; and
 - records of decisions approving access persons' acquisitions of securities in IPOs and limited offerings.These records must be kept for five years in an easily accessible place, the first two years in an appropriate office of the adviser. Codes of ethics must be kept for five years after the last date they were in effect. A supervised person's acknowledgments of the code must be kept for five years after the individual ceases to be a supervised person. The list of access persons must include every person who was an access person at any time within the past five years, even if some of them are no longer access persons of the adviser.
11. *Form ADV Disclosures.* Advisers must include summaries of their codes of ethics in their Forms ADV and, on request, furnish clients with copies of their codes of ethics.
12. *Policies to consider in drafting a code.* In adopting Rule 204A-1, the SEC also set out a list of elements of a code that address issues the SEC believes advisers should consider in drafting their codes:
 - Prior written approval before an access person can place a personal securities transaction ("pre-clearance").
 - Maintenance of watch lists (lists of issuers of securities that the advisory firm is analyzing or recommending for client transactions, and prohibitions on personal trading in securities of those issuers).

- Maintenance of restricted lists (lists of issuers about which the adviser has inside information, and prohibitions on any personal or client trading in those issuers).
- “Blackout periods” when client trades are being placed or recommendations are being made and access persons are not permitted to trade for their own accounts.
- Reminders that scarce investment opportunities must be offered first to clients before the adviser or its employees may take them.
- Prohibitions or restrictions on “short swing” trading.
- Requirements to trade only through certain brokers, or limits on the number of brokerage accounts permitted.
- Requirements to provide the adviser with duplicate trade confirmations and account statements.
- Procedures for assigning new securities analyses to employees whose personal holdings do not present apparent conflicts of interest.

Conclusion

Advisers must adopt insider trading policies, ensure clear and accurate disclosures about personal trading in their Forms ADV and private placement memoranda, and adopt and enforce codes of ethics. Because employee trading issues are most likely to arise in the codes of ethics, advisers should:

- review their codes generally to ensure that they contain discussions and examples of personal trading and conflicts of interest, and a definition of access person;
- require pre-clearance of personal trades in public or private securities;
- require duplicate confirmations and account statements of employee trades;
- determine who their access persons are, and inform them of their transactions and holdings reporting duties;
- require employees periodically to certify that they have read and understood the code of ethics; and
- require pre-approval of any employee’s outside employment as an officer or director of a company.

In addition, it would be beneficial for an adviser, where applicable, to require employees to trade only through an affiliated broker-dealer. If an adviser permits its employees to trade alongside the adviser’s clients, the adviser should carefully consider this practice and how it fits with the adviser’s code of ethics, should adopt procedures similar to those required in the SMC letter and any other SEC precedents, and should disclose this practice to clients. Finally, in light of the misappropriation of an investment opportunity issue raised in the *Conan, Kemper and Embry* cases, advisers should review their personal trading procedures to ensure that they are designed to detect a personal trade that may be a misappropriated opportunity, and adopt disinterested employee review procedures for limited opportunity personal trades.

Notes

1. See *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963).
2. See Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 17(a) of the Securities Act of 1933. Rule 10b-5 makes it unlawful “for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

3. Investment advisers to registered investment companies, as well as other fund insiders, are subject to Section 17(j) of the Investment Company Act, which makes it unlawful for certain persons affiliated with an investment company to engage in fraudulent, manipulative or deceptive practices in connection with the purchase or sale of a security held or to be acquired by the investment company, in contravention of SEC rules. Section 17(j) also gives the SEC the authority to adopt rules to prevent potentially fraudulent trading practices by these affiliated persons. Rule 17j-1 prohibits certain affiliated persons of an investment company from engaging in fraudulent practices in connection with their purchase or sale of a security that the investment company holds or will acquire. Similar to Rule 204A-1, Rule 17j-1 requires funds, their advisers and their principal underwriters to (i) adopt and enforce codes of ethics, (ii) require access persons to report trades quarterly, and (iii) keep records of violations of their codes and any actions taken in response.
4. *Strong/Corneliuson Capital Management, Inc.*, Investment Company Act Release No. 20394, Advisers Act Release No. 1425 (July 12, 1994).
5. *Chancellor Capital Management, Inc.*, Advisers Act Release No. 13447 (Oct. 18, 1994).
6. Section 207 of the Advisers Act makes it unlawful for any person willfully to make any untrue statement of a material fact, or omit to state a material fact, in a registration application or report filed with the SEC under Section 203 (relating to registration forms), or a record required to be maintained under Section 204 (relating to reports required by rule, such as amendments to the written disclosure statement or "brochure" required by Rule 204-3).
7. *Joan Conan*, Advisers Act Release No. 1446, Exchange Act Release No. 34756 (Sept. 30, 1994).
8. The SEC's order is significant in that it suggests that all of the adviser's clients must be offered the investment opportunity – not merely the manager's clients.
9. The order noted that the adviser's compliance procedures required preclearance and that Conan failed to pre-clear. Therefore, the adviser did not have the opportunity to determine if another client should purchase the warrants. Pre-clearance can act as a mechanism to prevent front running, and the Conan order suggests a second reason for requiring pre-clearance: to prevent misappropriation of investment opportunities.
10. See also *In the Matter of Ronald v. Speaker and Janus Capital Corporation*, Investment Company Act Release No. 22461 (Jan. 13, 1997) (portfolio manager made a profit on same day purchase and sale of debentures in which fund could have invested, and failed to disclose transactions to the fund or obtain an independent representative's prior consent). While obtaining a client's consent is often impractical, obtaining the consent of a disinterested representative may be equally impractical when the adviser is a small enterprise.
11. *SEC v. Talton R. Embry and Magten Asset Management Corp.*, Litigation Release No. 13777 (Sept. 9, 1993); *Talton Embry*, Advisers Act Release No. 1382 (Sept. 16, 1993).
12. The SEC also alleged that *Embry* (i) failed to report any of over 700 personal trades to the adviser of investment companies he managed; (ii) engaged in principal trades with clients without disclosing his capacity and obtaining client consent; and (iii) inaccurately disclosed in his Form ADV that no officers would trade within seven days of client trades in the same security, or recommend to clients securities in which the adviser or a related person had a financial interest. The SEC alleged that Embry violated or aided and abetted violations of, among other things, Section 17(j) of the Investment Company Act and Rule 17j-1 thereunder, and Sections 204 and 207 of the Advisers Act and Rules 204-1(b) and 204-3 thereunder. Embry was enjoined from violating these provisions and ordered to disgorge \$1 million in profits, engage an independent consultant to recommend improved compliance procedures, and adopt those recommendations.
13. *Kemper Financial Services, Inc.*, Advisers Act Release No. 1494 (June 6, 1995).
14. *Gabelli & Company, Inc. and GAMCO Investors, Inc.*, Advisers Act Release No. 1457, Exchange Act Release No. 35057 (Dec. 8, 1994). See also *Norman L. Yu & Co., Inc. and Norman L. Yu*, Advisers Act Release No. 1607 (Jan. 21, 1997) (among other things, adviser did not establish written policies to prevent the misuse of material non-public information until 1993, almost five years after Section 204A was added to the Advisers Act).
15. Section 15(f) of the Exchange Act requires registered brokers and dealers to establish, maintain and enforce written policies and procedures to prevent the misuse of material non-public information.

16. *SMC Capital, Inc.*, SEC No-Action Letter (pub. avail. Sept. 5, 1995). In an interpretive letter issued in late 1995, the SEC staff stated that trades for the account of an affiliated person of a fund could be aggregated with client trades, provided those personal trades complied with the entity's code of ethics. See also *Pretzel & Stouffer*, SEC No-Action Letter (pub. avail. Dec. 1, 1995). The SMC letter did not discuss whether an "account of an affiliated person of a fund" included an account in which the adviser or its employees owned all of the interests, e.g. an employee benefit plan.
17. Neither the no-action request nor the staff's response specified the maximum amount of an interest in a collective investment vehicle that the adviser or its employees could own and still have the vehicle be considered a "client" account.
18. Section 202(a)(25) of the Advisers Act. In Prudential Insurance Company of America (pub. avail. Mar. 1, 2005), the SEC staff granted no-action relief to allow Prudential to treat only those persons involved in its advisory business as "supervised persons;" the majority of Prudential's employees were solely involved in its insurance business.
19. Exceptions include transactions and holdings in Treasury securities and money market instruments such as bankers' acceptances, bank certificates of deposit, commercial paper, repurchase agreements and other high-quality short-term debt instruments, and shares of money market funds.
20. Closed-end funds and exchange-traded funds are reportable securities.
21. A limited offering is an offering that relies on Section 4(2) or 4(6) of the Securities Act of 1933 or Regulation D thereunder for an exemption from registration under that act.

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