

MEMO# 29147

July 6, 2015

SEC Division of Investment Management Issues Guidance Relating to Treatment of Blind Trusts Under Advisers' Codes of Ethics

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TO: CHIEF COMPLIANCE OFFICER COMMITTEE No. 13-15
INVESTMENT ADVISER MEMBERS No. 17-15
SMALL FUNDS MEMBERS No. 32-15 RE: SEC DIVISION OF INVESTMENT MANAGEMENT
ISSUES GUIDANCE RELATING TO TREATMENT OF BLIND TRUSTS UNDER ADVISERS' CODES
OF ETHICS

The SEC's Division of Investment Management has published another IM Guidance Update: Personal Securities Transaction Reports by Registered Investment Advisers: Securities Held in Accounts Over Which Reporting Persons Had no Influence or Control. [\[1\]](#) The Guidance is intended to respond to questions the Division has received and situations OCIE has encountered regarding the treatment of blind trusts [\[2\]](#) and similar vehicles under the reporting exception in the code of ethics rule under the Investment Advisers Act, Rule 204A-1. In particular, Rule 204A(b)(3)(i) provides a reporting exception for securities held by an access person in a blind trust or other account over which the access person has "no direct or indirect influence or control."

The Guidance discusses the staff's view regarding how blind trusts and other similar accounts can be established to qualify for the reporting exception in Rule 204A-1. According to the staff, "the fact that an access person provides a trustee with management authority over a trust for which he or she is a grantor or beneficiary, or provides a third-party manager discretionary investment authority over his or her personal account, by itself, is insufficient" to conclude that the access person may rely on the exception. [Emphasis in original.] This is because the access person could suggest purchases or sales of investments to the trustee or third-party discretionary manager, direct purchases and sales of investments, or consult with the trustee or account manager regarding the account [\[3\]](#) -- each of which would disqualify reliance on the exception. To avoid such disqualification, an adviser may consider including in its policies and procedures under Rule 204A-1 additional controls to establish a reasonable belief that the access person had no

direct or indirect influence or control over the trust or account. Such additional controls might include the following:

- Obtaining 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);
- Obtaining periodic certifications by access persons and their trustees or discretionary third-party managers regarding the access persons' influence or control over trusts or accounts;
- 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
- 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.

With respect to the use of certifications (second bullet, above), the Guidance notes that obtaining a general certification, alone, would likely not be sufficient. Instead, advisers should consider obtaining more specific certifications from access persons. Questions in a specific certification might include the following:

- "Did you suggest that the trustee or third-party discretionary account 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 account 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 account manager as to particular allocation of investments to be made in account X during time period Y?"

Tamara K. Salmon
Associate General Counsel

endnotes

[1] IM Guidance Update 2015-03 (June 2015) ("Guidance"), which is available at: <http://www.sec.gov/investment/im-guidance-2015-03.pdf>. As noted in the Guidance, the statements in it "represent the views of the Division of Investment Management. [The] guidance is not a rule, regulation or statement of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved its content." Guidance at endnote, p. 4.

[2] As described in the Guidance, "A blind trust is typically a legal arrangement in which a trustee manages funds for the benefit of somebody (e.g., an 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." Guidance at p. 1.

[3] The Guidance affirms that the trustee or manager simply summarizing, describing, or explaining account activity to the access person, without receiving directions or suggestions from the access person, "would not implicate influence or control by the access person over that account." Guidance at p. 2.

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