

MEMO# 28770

February 25, 2015

SEC Publishes Guidance Update Regarding Fund Advisory Personnel Accepting Gifts or Entertainment

[28770]

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TO: INTERNAL SALES MANAGERS ROUNDTABLE No. 4-15
SALES FORCE MARKETING COMMITTEE No. 2-15 RE: SEC PUBLISHES GUIDANCE UPDATE
REGARDING FUND ADVISORY PERSONNEL ACCEPTING GIFTS OR ENTERTAINMENT

The staff of the SEC's Division of Investment Management has published a Guidance Update to highlight "the conflict of interest that arises when the personnel of a fund's investment adviser are presented with gifts, favors, or other forms of consideration (gifts or entertainment) from persons doing business, or hoping to do business, with the fund." [\[1\]](#) Importantly, the Guidance expresses the staff's view that, because the receipt of gifts or entertainment "may implicate the prohibitions in section 17(e)(1) of the 1940 Act," a fund's compliance policies and procedures under SEC Rule 38a-1 [\[2\]](#) should address this issue in a way that is appropriate based on "the nature of the adviser's business, among other considerations." [\[3\]](#) So, for example, some advisers might decide to adopt a blanket prohibition that applies to all gifts and entertainment, while others might decide to utilize a pre-clearance mechanism. [\[4\]](#)

As discussed in the Guidance, generally speaking, Section 17(e)(1) of the Investment Company Act of 1940 ("the 1940 Act") prohibits any affiliated person of an investment company, or any affiliated person of such person, acting as agent, to accept from any source any compensation (other than a regular salary or wages from the registered investment company) for the purchase or sale of any property to or for the investment company. As discussed in the Guidance, for purposes of this prohibition, a fund's adviser is an affiliated person of the fund and the adviser's officers, directors, and employees are affiliated persons of the adviser subject to the prohibition. An example of a conflict of interest that might arise under this prohibition is when a fund's portfolio manager accepts any gift or entertainment from a broker-dealer for a transaction involving the fund's portfolio securities.

Importantly, the Guidance points out that, because of the language of Section 17(e)(1), "courts have found 'some nexus must be established between the compensation received and the property bought or sold.'" [\[5\]](#)

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endnotes

[1] See Acceptance of Gifts or Entertainment by Fund Advisory Personnel – Section 17(e)(1) of the Investment Company Act, IM Guidance Update, Securities and Exchange Commission, Division of Investment Management No. 2015-01 (February 2015) (“Guidance”), which is available at:
<http://www.sec.gov/investment/im-guidance-2015-01.pdf>.

[2] Footnote 8 to the Guidance reminds investment adviser registrants that Rule 206(4)-7 under the Investment Advisers Act of 1940 requires them to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act by the adviser or any of its supervised persons.

[3] Guidance at p. 2.

[4] Other examples can be found in fn. 7.

[5] See Guidance at fn. 6.

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