

MEMO# 18869

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SEC OFFICIAL PROVIDES LIST OF DUTIES AND FUNCTIONS FOR CHIEF COMPLIANCE OFFICERS TO INVESTMENT ADVISORY FIRMS

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [18869] May 18, 2005 TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 30-05 COMPLIANCE MEMBERS No. 2-05 INTERNAL AUDIT ADVISORY COMMITTEE No. 3-05 INVESTMENT ADVISER MEMBERS No. 11-05 SEC RULES MEMBERS No. 65-05 SMALL FUNDS MEMBERS No. 45-05 UNIT INVESTMENT TRUST MEMBERS No. 10-05 RE: SEC OFFICIAL PROVIDES LIST OF DUTIES AND FUNCTIONS FOR CHIEF COMPLIANCE OFFICERS TO INVESTMENT ADVISORY FIRMS At a recent industry meeting of hedge fund chief compliance officers, Gene Gohlke, Associate Director of the Securities and Exchange Commission's Office of Compliance Inspections and Examinations, outlined his views on the qualities and duties Rule 206(4)-7 under the Investment Advisers Act of 1940 establishes for chief compliance officers of investment advisers.¹ In his remarks, Gohlke provided a list of 24 specific duties and functions that adviser CCOs should perform or consider performing in administering their firm's compliance program.²

1. Advises senior management on the fundamental importance of establishing and maintaining an effective culture of compliance within the firm.
2. Confers with and advises other senior management of the firm on significant compliance matters and issues.

1 See Speech by SEC Staff: Managed Funds Association Educational Seminar Series 2005: Practical Guidance for Hedge Fund CCOs Under the SEC's New Regulatory Framework – A Job Description for CCOs of Advisers to Private Investment Funds, by Gene Gohlke, Associate Director Office of Compliance Inspection and Examinations, SEC, May 5, 2005. The speech is available from the SEC's website at <http://www.sec.gov/news/speech/spch050505gg.htm>. Although the audience consisted of CCOs of advisers to private investment funds, Gohlke noted that his remarks also apply to CCOs that represent firms that are either registered or intend to register with the SEC.

2 Mr. Gohlke's statements regarding the "job description" for adviser CCOs were preceded by the caveats that (i) not all of the duties and functions on the list may be appropriate for all CCOs, and (ii) the list includes items that are above and beyond what is required by Rule 206(4)-7. Mr. Gohlke also noted that Rule 38a-1 under the Investment Company Act of 1940 provides additional responsibilities for CCOs of registered investment companies.

3. Provides "consulting" to business people throughout the firm regarding compliance matters and issues, and should become known as the "go to person" on compliance matters.
4. Becomes involved in analyzing and resolving significant compliance issues that arise.
- 5.

Ensures that the steps in the firm's compliance process – risk identification, establishing policies and procedures, and implementing those policies and procedures – are appropriate and are undertaken timely by staff of the firm to whom those functions have been assigned. 6. Becomes personally involved in various steps of the process, such as serving on risk or policies and procedures committees, when necessary and appropriate. 7. Ensures that compliance policies and procedures are comprehensive, robust, current, and reflect the firm's business processes and conflicts of interest. 8. Ensures that appropriate principles of management and control are observed in the implementation of policies and procedures. These principles include separation of functions, clear assignment of responsibilities, measuring results against standards, and reporting outcomes. 9. Ensures that all persons within the firm with compliance responsibilities are competently and fully performing those functions. 10. Ensures that quality control (transactional) testing is conducted as appropriate to detect deviations of actual transactions from policies or standards, and that results of such tests are included on exception and other management reports and are promptly addressed, escalated when necessary, and resolved by responsible business people. 11. Ensures there is timely and appropriate review of material and repetitive compliance issues as indicators of possible gaps and weaknesses in policies and procedures or risk identification processes, and facilitates the use of such information in keeping the firm's compliance program evergreen. 12. Undertakes periodic analyses and evaluation of compliance issues found in the regular course together with the results of appropriate forensic testing conducted by compliance staff as a means for obtaining additional or corroborating evidence regarding both the effective functions of the firm's compliance program and the possible existence of disguised or undetected compliance issues. 13. Ensures that compliance programs of service providers used by the adviser are effective so that the services provided by these firms are consistent with the adviser's fiduciary obligations to its clients. 14. Establishes a compliance calendar that identifies all important dates by which regulatory, client reporting, tax, and compliance matters must be completed to ensure that these important deadlines are not missed. 15. Promotes a process for regularly mapping a firm's compliance policies and procedures and conflicts of interest to disclosures made to clients so that disclosures are current, complete, and informative. 16. Manages the adviser's compliance department or unit in ways that encourages proactive work, a practice of professional skepticism, and "thinking outside the box" by compliance staff. 17. Manages the adviser's code of ethics, which is a responsibility given to CCOs of advisers by Rule 204A-1 under the Advisers Act. 18. Undertakes or supervises others in performing the required annual review of an adviser's compliance program.³ 19. Reports the results of the annual review to senior management and ensures that recommendations for improvements that flow from the review are implemented as appropriate. 20. Is a strong advocate for allocating an appropriate amount of a firm's resources to the development and maintenance of an effective compliance program and compliance staff. 21. Recognizes the need to remain current on regulatory and compliance issues and participates in continuing education programs. 22. Ensures that staff of the firm is appropriately trained in compliance-related matters. 23. Acts as the adviser's liaison and point of contact with the SEC examination staff, both during exams and as part of the SEC's CCO Outreach program. 24. Actively contributes to industry efforts to develop and implement good compliance practices for advisers to private investment funds.

Barry E. Simmons Associate Counsel 3 Mr. Gohlke also noted that although Rule 206(4)-7 requires every adviser to conduct at least an annual review of its compliance program, advisers should consider the need for interim reviews in response to significant compliance events, changes in business arrangements, and regulatory developments.

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