Personal Securities Transactions

Personal securities transactions of associated persons and their immediate family members may lead to a material conflict of interest and thus requires explicit policy and procedure to ensure that there is no breach by the adviser or its associated persons of their collective fiduciary duties to clients. Comprehensive oversight and review of these transactions also directly mitigates to a degree the more serious conflicts of interest which have potential criminal implications, i.e., front-running and insider trading.

The anti-fraud provision of Rule 206 “prohibits the use of any scheme, practice or transaction ... that operates as a fraud or deceit on a client.” Policy/procedures addressing the personal trading activity of registered advisers are a mandatory element of the firm’s Code of Ethics and is a very big bull’s eye for regulatory compliance. Rule 204A-1 requires SEC registered advisers to have a formal Code of Ethics. This rule was established as means for advisers to more effectively meet the anti-fraud provisions of the 1940 Act. The Code mandates that in those circumstances where a real or potential conflict of interests exists relative to the fiduciary duty of the firm, the firm and its employees are required to disclose in a forthright and timely manner the COI and must resolve or manage the conflict in a manner that does not in any way disadvantage the advisory client.

The SEC is also concerned about risks that may be poised to the adviser through extended family members. It is imperative that the Chief Compliance Officer and advisory personnel be acutely aware of potential conflicts of interest and/or commission of fraud by spouses and other close family members that may either directly or indirectly impair the fiduciary duty of the adviser. The SEC “Friends and Family Project” represents the Commission’s strong emphasis on the potential risk poised to advisers by the extended family of associated persons of the adviser. Personal securities records must be provided by the advisory person and the extended family member(s) within 10 days of the current quarter end. Exempted transactions for SEC registered advisers include open-end mutual funds transactions, government securities, money market and open-end exchange traded funds. The SEC recognizes that while so called UIT ETFs are reportable, the Commission strongly recommends that all ETFs be reported.

Initial and Annual Holdings Reports

Under Rule 204A-1, an adviser’s code of ethics must require a report of each access person's securities holdings at the time the person becomes an access person and at least annually thereafter. The reports must be current as of 45 days prior to the date the person became an access person for the initial report, and current as of 45 days prior to the submission of each annual report.
Quarterly Transaction Reports

An adviser's code of ethics must also require access persons to submit quarterly reports of all their personal securities transactions. These reports must be due no later than 30 days after the completion of each calendar quarter. To ease the burden of compliance, however, Rule 204A-1 permits the code of ethics to excuse access persons from submitting transaction reports that would duplicate information contained in trade confirmations and/or account statements held in the adviser's records as long as the adviser received them within 30 days after the end of the calendar quarter in which the transactions took place. An access person who engages in no reportable transactions during the quarter is not required to submit a transaction report.

The SEC Books and Records rule outlines specific requirements with regard to Personal Securities Holdings Transactions Reports and their maintenance, as follows: (a) a record of each holdings and transactions reports made by an access person (as required by 204A-1) including any information, duplicate confirmations or statements (paragraph (b)(3)(iii) of that section) in lieu of such reports; (b) a record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and (c) a record of any decision, and the reasons supporting the decision, to approve the acquisition of securities in IPOs or limited offerings by access persons (204A-1(c)), for at least five years after the end of the fiscal year in which the approval is granted.


About Financial Tracking Technologies, LLC

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