

STATE-REGISTERED ADVISER UPDATE

State of Georgia Set to Expand Examination Program

In her most recent report to the American Bar Association, Georgia's Secretary of State and Commissioner of Securities Karen Handel reported that the State intends to expand its examination program during 2009, with a special emphasis on the examination of state-registered investment advisers and independent broker-dealers. In a similar vein, the State Securities Regulators, acting through the North American Securities Administrators Association (NASAA) have recently requested that Congress include an additional commitment of federal funds to assist state regulators in examining providers of financial services that are not within the auspices of the Securities and Exchange Commission. Together, these developments signal an inevitable heightened scrutiny of the business practices of state-registered investment advisers.

In anticipation of more frequent and detailed examinations, all state-registered advisers should

Does Your Code of Ethics Need a Tune-Up?

In anticipation of expanded examinations of state-registered advisers by the Secretary of State, you should consider whether your Code of Ethics requires enhancement or revision in order to comply with applicable regulations. Secretary of State Rule 590-4-8-.18(1)(u) makes it unlawful for any state-registered investment adviser or investment adviser representative to fail to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material non-public information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940. Section 204A of the Investment Advisers Act, in turn, requires investment advisers to maintain and enforce a written Code of Ethics (COE). A COE must contain written standards of business conduct that reflect the adviser's fiduciary obligations to its clients and provisions requiring that all access persons report personal securities transactions and

consider what steps need to be taken to comply with all laws and regulations. Beginning in this month's letter, we will identify and discuss aspects of your advisory business that will likely be the subject of regulatory scrutiny in the coming months.

This month's article deals with the Code of Ethics that every state-registered adviser must have in place in order to comply with the Secretary of State rules. In the coming months we plan on discussing the state's Books and Records Rule, Written Supervisory Procedures, Custody of Client Funds, Compliance with the Federal Trade Commission's Privacy Regulations and other topics likely to be covered in a state examination.

We hope you find the information provided in our letters to be of practical assistance in devising your policies and procedures and implementing them in such a way as to comply with the applicable rules and regulations of the Georgia Secretary of State and the antifraud provisions of the Georgia Securities Act of 1973.

Did You Know?

Under the Georgia Uniform Securities Act, hedge fund advisers must register even if exempt from registration under federal law.

holdings periodically, among other things. "Access persons" generally include all supervised personnel who have access to non-public information about clients' portfolio holdings, purchases or sales, and includes any person who is involved in making recommendations to clients or has access to non-public recommendations.

Access persons must submit various reports, including an initial holdings report (which must be submitted within 10 days of becoming an access person) and an annual holdings report. Certain specific information regarding all reportable securities is required by the rule.

Within 30 days after the end of each quarter, access persons must also submit transaction reports

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See "Code of Ethics," p. 2

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Code of Ethics Tune-Up, continued

that include, among other things, the title and type of security, exchange ticker symbol or CUIISP number, number of shares and principal amount, nature of transaction, price at which the transaction was effected, and the broker-dealer or bank through which the transaction was effected.

Under the rule, the COE must also require supervised persons to report any violation of the COE promptly to the Chief Compliance Officer. Advisers are required to maintain copies of the COE in effect for the prior five years as well as records of violations and any actions taken by the manager, among other things. The COE must be distributed to all access persons. The firm must briefly describe the details of its COE in Part II of its Form ADV and must provide clients with a copy if they request one.

In addition to meeting the record keeping requirements of the rule, advisers should take steps to assure that supervised persons, including access persons, do not enter into transactions that are disadvantageous to clients or otherwise raise fiduciary or antifraud issues. There may be situations that pose close questions as to whether such issues are implicated. It is therefore important for an adviser to consider implementing other procedures or processes, including regular reporting and review procedures, designed to detect and prevent instances of such fraudulent or deceptive conduct. If firm resources permit, the SEC's staff has recommended, and presumably the Georgia Commissioner of Securities would concur, that automated or computerized

analysis of trading patterns might be justified as part of an overall process of detecting such abuses. Many advisers also implement procedures, such as pre-clearing requirements, to minimize potential personal trading abuses. The rule itself requires that the COE prohibit direct or indirect acquisition of beneficial ownership of any supervised person in an IPO or limited offering without pre-approval by the adviser's firm.

In summary, a state-registered investment adviser's COE should be reasonably designed to prevent and detect fraudulent or deceptive activity, including the misuse of material non-public information that may result in harm to a client. Depending on the nature of the adviser's business, what the regulators may consider to be reasonable procedures will vary. In any event, it is wise to reevaluate your COE at least annually to determine whether policy changes or procedures for compliance with the rules should be made.

This Month:

What State-Registered Advisers Need To Know To Prepare for Examinations (Part One)

About Page Perry, LLC

Page Perry is a full-service law firm. Our regulatory and compliance group regularly represents financial services professionals, including investment advisers, with respect to compliance, regulatory and enforcement matters.

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