IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 80376

GREGORY GARMONG,

Appellant

--against--

WESPAC; GREG CHRISTIAN,

Respondents

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne Simons, Case No. CV12-01271

JOINT APPENDIX VOLUME 2

Carl M. Hebert, Esq.
Nevada Bar No. 250
202 California Ave.
Reno, NV 89509
(775) 323-5556

Attorney for Appellant
Gregory Garmong

INDEX TO JOINT APPENDIX

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: WESPAC Advisors, LLC	IRS Empl. Ident. No.:

Item of Form (identify)	Answer
13.A	Persons associated with WESPAC may receive insurance and/or brokerage commissions for the services described herein. The Frank Russell Investment Management Company maintain an active database of institutional money managers in the various disciplines and investment styles. This information is available, both directly and indirectly, through our working arrangement.
13.B	WESPAC Advisors receives client referrals from Charles Schwab & Co., Inc. ("Schwab") through WESPAC's participation in Schwab Advisor Network ("the service"). The Service is designed to help investors find an independent investment advisor. Schwab is a broker-dealer independent of and unaffiliated with WESPAC. Schwab does not supervise Advisor and has no responsilibity for WESPAC's management of clients' portfolios or Advisor's other advice or services. WESPAC pays Schwab fees to receive client referrals through the Service. WESPAC's participation in the Service may raise potential conflicts of interest described below. WESPAC pays Schwab a participation fee on all referred clients' accounts that are maintained in custody at Schwab and a Non-Schwab Custody Fee on all accounts that are maintained at, or transferred to, another custodian. The Participation Fee paid by WESPAC is percentage of the fees the client owes to WESPAC or a percentage of the value of the assets in the client's account, subject to a minimum Participation Fee. WESPAC pays Schwab the Participation Fee for so long as the referred client's account remains in custody at Schwab. The Participation Fee is billed to WESPAC quarterly and may be increased, decreased, or waived by Schwab from time to time. The Participation Fee is paid by WESPAC and not by the client. WESPAC has agreed no to charge clients referred through the Service fees or costs greater than the fees or costs WESPAC charges clients with similar portfolios who were not referred through the Service. WESPAC generally pays Schwab a Non-Schwab Custody Fee if custody of a referred client's account is not maintained by, or assets in the account are transferred from Schwab. This Fee does not apply if the client was solely responsible for the decision not to maintain custody at Schwab. The Non-Schwab Custody Fee is a one-time payment equal to a percentage of the assets placed with a custodian other than Schwab. The Non-Schwab Custody Fee is higher than the Participation Fees WESPAC generally would pay in a single year. Thus, WESPAC will have an incentive to recommend that client accounts be held in custody at Schwab. The Participation and Non-Schwab Custody Fees will be based on assets in accounts of WESPAC's clients who were referred by Schwab and those referred clients' family members living in the same household. Thus, WESPAC will have incentives to encourage household members of clients referred through the service to maintain custody of their accounts and execute transactions at Schwab and to instruct Schwab to debit WESPAC's fees directly from their accounts. For accounts of WESPAC's clients maintained in custody at Schwab, Schwab will not charge the client separately for custody but will receive compensation from WESPAC's clients in the form of commissions or other transaction-related compensation on securities trades executed through Schwab. Schwab also will receive a fee (generally lower than the applicable commission on trades it executes) for clearance and settlement of trades executed through broker-dealers other than Schwab. Schwab's fees for trades executed at other broker-dealers are in addition to the other broker-dealer's fees. Thus, WESPAC may have an incentive to cause trades to be executed through Schwab rather than another broker-dealer. WESPAC nevertheless, acknowledges its duty to seek best execution of trades for client accounts. Trades for client accounts held in custody at Schwab may be executed through a different broker-dealer than trades for WESPAC's other clients. Thus, trades for accounts custodied at Schwab may be

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:	IRS Empl. Ident. No.:
VESPAC Advisors, LLC	

Item of Form (identify)	Answer
	executed at different times and different prices than trades for other accounts that are executed at other broker-dealers. Advisor may, in some instances, use the services of independent contractors to introduce its services to prospective clients. When such introductions are successful, these independent contractors typically receive a portion of the client's advisory fees paid to the Advisor. WESPAC's fees are never increased as a result of this arrangement and such appointments and associations are disclosed prior to any such engagement. Any compensation to third parties for clients is made as required by Rule 206(4)-3 of the Investment Advisor's Act of 1940. In these types of cases, the independent contractor serves in the role of sub-advisor and performs the field work typically associated with providing investment advisory services to qualified retirement plans. WESPAC Advisors assumes the service support and back office role in such relationships.

Notice Filing Status

Organization CRD Number: 148242	**Primary Business Name:** WESPAC ADVISORS, LLC
Organization SEC Number: 801-69552	**Full Legal Name:** WESPAC ADVISORS, LLC
No BD Record	**Electronic Filer**

Jurisdiction	NV
Notice Filing Status	Notice Filed
Status Effective Date	09/24/2008

Jurisdiction	Notice Filing Status	Status Effective Date
AZ	Notice Filed	09/24/2008
CA	Notice Filed	09/24/2008
CO	No Longer Notice Filed	12/31/2012
CT	No Longer Notice Filed	12/31/2011
NV	Notice Filed	09/24/2008
OR	Notice Filed	09/24/2008
TN	No Longer Notice Filed	12/31/2012
TX	Notice Filed	09/24/2008
WA	Notice Filed	09/24/2008

Tw Lin

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 275 and 279

[Release Nos. IA-2256, IC-26492; File No. S7-04-04]

RIN 3235-AJ08

Investment Adviser Codes of Ethics

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule and related rule amendments under the Investment Advisers Act of 1940 that require registered advisers to adopt codes of ethics. The codes of ethics must set forth standards of conduct expected of advisory personnel and address conflicts that arise from personal trading by advisory personnel. Among other things, the rule requires advisers' supervised persons to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The Commission is also adopting amendments to rule 17j-1 to conform certain provisions to the new rule. The rule and rule amendments are designed to promote compliance with fiduciary standards by advisers and their personnel.

DATES: Effective Date: August 31, 2004. Compliance Date: January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robert L. Tuleya, Attorney-Adviser, or Jennifer Sawin, Assistant Director, at 202-942-0719, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") is adopting (i) rule 204A-1 [17 CFR 275.204A-1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act"); (ii) amendments to rule 204-2 [17 CFR 275.204-2] and Form ADV [17 CFR 279.1] under the Advisers Act; and (iii) amendments to rule 17j-1 [17 CFR 270.17j-1] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Company Act").[1]

EXECUTIVE SUMMARY

The Commission is adopting new rule 204A-1 under the Advisers Act to require registered investment advisers to adopt codes of ethics. The rule requires an adviser's code of ethics to set forth standards of conduct and require compliance with federal securities laws. Codes of ethics must also address personal trading: they must require advisers' personnel to report their personal securities holdings and transactions, including those in affiliated mutual funds, and must require personnel to obtain pre-approval of certain investments. The Commission is amending the Advisers Act recordkeeping rule to require advisers to keep copies of their codes of ethics and records relating to the code. The Commission is also amending the client disclosure requirements under Part II of Form ADV to require advisers to describe their codes of ethics to clients.

I. BACKGROUND

In January of this year, we proposed to require every adviser registered with us to adopt and enforce a written code of ethics applicable to its supervised persons.[2] Our proposal was designed to prevent fraud by reinforcing fiduciary principles that must govern the conduct of advisory firms and their personnel. The proposal was part of a package of regulatory initiatives with which we have responded to a number of recent enforcement actions against advisers or their personnel alleging violations of their fiduciary obligations to clients, including mutual fund clients.[3]

Advisers' codes would be required to contain provisions reminding employees of their obligations to clients as well as provisions requiring reporting of personal securities transactions and holdings. In order to ensure that advisers' employees are made aware of their firms' standards, advisers would have to obtain (and keep) a written acknowledgement from each supervised person confirming that he or she received a copy of the code of ethics and any amendments. While the code of ethics would have to contain certain minimum provisions, our proposal left advisers with substantial flexibility to design individualized codes that would best fit the structure, size and nature of their advisory businesses.

We received 44 comment letters in response to our proposal. Most commenters supported requiring advisers to have written codes of ethics, and supported the flexibility that our proposal offered. Today, we are adopting new rule 204A-1 with certain changes that respond to commenters' recommendations.

II. DISCUSSION

A. Standards of Conduct and Compliance with Laws

Rule 204A-1 requires each adviser's code of ethics to set forth a standard of business conduct that the adviser requires of all its supervised persons.[4] The rule does not require the adviser to adopt a particular standard, but the standard chosen must reflect the adviser's fiduciary obligations and those of its supervised persons, and must require compliance with the federal securities laws.[5]

This provision, which we are adopting as proposed, establishes only a minimum requirement. Advisers are free to set higher standards for their employees, such as those established by professional or trade

groups.[6] Of course, any other code adopted for use must meet the minimum requirements of the rule, or be supplemented to meet the minimum requirements.[7]

We urge advisers to take great care and thought in preparing their codes of ethics, which should be more than a compliance manual. Rather, a code of ethics should set out ideals for ethical conduct premised on fundamental principals of openness, integrity, honesty and trust. A good code of ethics should effectively convey to employees the value the advisory firm places on ethical conduct, and should challenge employees to live up not only to the letter of the law, but also to the ideals of the organization.[8]

B. Protection of Material Nonpublic Information

We proposed to require codes of ethics to prevent access to material nonpublic information about the adviser's securities recommendations, and client securities holdings and transactions by individuals who do not need the information to perform their duties.[9] Commenters supported our objective of controlling access to information as a first line of defense against misuse, but noted that it may be impractical to segregate employees, particularly in smaller firms that have limited office space. We are not requiring this provision in the code of ethics, but remind advisers that they must maintain and enforce policies and procedures to prevent the misuse of material nonpublic information,[10] which we believe includes misuse of material nonpublic information about the adviser's securities recommendations, and client securities holdings and transactions.[11] Advisers' duty of care also requires that they safeguard this sensitive information.[12] Advisers should carefully consider how to control dissemination of sensitive information both within their organizations and outside them.

C. Personal Securities Trading

Each adviser's code of ethics must require an adviser's "access persons" to periodically report their personal securities transactions and holdings to the adviser's chief compliance officer or other designated persons.[13] The code of ethics must also require the adviser to review those reports.[14] Reviewing these reports will allow advisers as well as the Commission's examination staff to identify improper trades or patterns of trading by access persons. The reports are modeled largely on those required by rule 17j-1 under the Company Act.[15]

1. Personal Trading Procedures

As discussed in more detail below, while rule 204A-1 requires advisers' codes of ethics to contain provisions requiring access persons to report securities transactions and holdings, it does not require advisers to adopt many of the detailed prophylactic measures common to many codes.[16] Commenters agreed with this approach, which we took to accommodate the vast differences among advisory firms registered with us and the variety of risks associated with employee securities transactions. Advisory firms that have already adopted codes of ethics, however, commonly include many of the following elements, or address the following issues, which we believe that all advisers should consider in crafting their own procedures for employees' personal securities trading.[17]

- Prior written approval before access persons can place a personal securities transaction ("pre-clearance").[18]
- Maintenance of lists of issuers of securities that the advisory firm is analyzing or recommending for client transactions, and prohibitions on personal trading in securities of those issuers.
- Maintenance of "restricted lists" of issuers about which the advisory firm has inside information, and prohibitions on any trading (personal or for clients) in securities of those issuers.
- "Blackout periods" when client securities trades are being placed or recommendations are being made and access persons are not permitted to place personal securities transactions.[19]
- Reminders that investment opportunities must be offered first to clients before the adviser or its employees may act on them, and procedures to implement this principle.[20]
- Prohibitions or restrictions on "short-swing" trading and market timing.[21]
- Requirements to trade only through certain brokers, or limitations on the number of brokerage accounts permitted.

- Requirements to provide the adviser with duplicate trade confirmations and account statements.
- Procedures for assigning new securities analyses to employees whose personal holdings do not present apparent conflicts of interest.[22]

2. "Access Persons" Subject to the Reporting Requirements

Under rule 204A-1, the adviser's code must require certain supervised persons, called "access persons," to report their personal securities transactions and holdings.[23] An access person is a supervised person who has access to nonpublic information regarding clients' purchase or sale of securities, is involved in making securities recommendations to clients or who has access to such recommendations that are nonpublic.[24] A supervised person who has access to nonpublic information regarding the portfolio holdings of affiliated mutual funds is also an access person.[25]

We are adopting the definition of "access person" as proposed. Some commenters suggested that we adopt a narrower definition covering only those employees who actually obtained nonpublic information, the approach rule 17j-1 takes for mutual fund advisers.[26] Others suggested that all advisory employees be covered.[27] Our approach takes the middle course. It treats as access persons employees who are in a position to exploit information about client securities transactions or holdings, and thus provides the adviser with a tool to protect its clients.

Access persons will include portfolio management personnel and, in some organizations, client service representatives who communicate investment advice to clients. These employees have information about investment recommendations whose effect may not yet be felt in the marketplace; as such, they may be in a position to take advantage of their inside knowledge. Administrative, technical, and clerical personnel may also be access persons if their functions or duties give them access to nonpublic information. Organizations in which employees have broad responsibilities, and where information barriers are few, may see a larger percentage of their staff subject to the reporting requirements. In contrast, organizations that keep strict controls on sensitive information may have fewer access persons.[28]

In many advisory firms, directors, officers and partners will also be access persons. Rule 204A-1, as proposed, contains a presumption that, if the firm's primary business is providing investment advice, then all of its directors, officers and partners are access persons.[29] Commenters supported this approach rather than rule 17j-1's special rules and revenue-based test for advisory firms "primarily engaged" in a business other than advising funds or advisory clients.[30]

3. Initial and Annual Holdings Reports

The code of ethics must require a complete report of each access person's securities holdings, at the time the person becomes an access person and at least once a year thereafter.[31] Commenters supported these reporting requirements, which are similar to those required by rule 17j-1.[32] The holdings reports must be current as of a date not more than 45 days prior to the individual becoming an access person (initial report) or the date the report is submitted (annual report). We had proposed to require initial holdings reports to be current as of the date the individual becomes an access person, and annual reports to be current within 30 days prior to submission, but many commenters told us these requirements were not flexible enough to allow access persons to use brokerage statements as the basis of their reports.[33]

4. Quarterly Transaction Reports

The code of ethics must require quarterly reports of all personal securities transactions by access persons, which are due no later than 30 days after the close of the calendar quarter.[34] The code of ethics may excuse access persons from submitting transaction reports that would duplicate information contained in trade confirmations or account statements that the adviser holds in its records, provided the adviser has received those confirmations or statements not later than 30 days after the close of the calendar quarter in which the transaction takes place.[35]

We have not adopted a requirement we proposed that would have required access persons that had no personal securities transactions during the quarter to submit a report confirming the absence of transactions. Commenters argued that reports confirming absence of transactions were unnecessary and burdensome, particularly when the adviser was relying on transaction records received from the access

person's broker-dealer during the course of the quarter.

5. Exceptions From Reporting Requirements

Rule 204A-1 permits three exceptions to personal securities reporting. No reports are required:

- With respect to transactions effected pursuant to an automatic investment plan.[36]
- With respect to securities held in accounts over which the access person had no direct or indirect influence or control.[37]
- In the case of an advisory firm that has only one access person, so long as the firm maintains records of the holdings and transactions that rule 204A-1 would otherwise require be reported.[38]

6. Reportable Securities

Access persons must submit holdings and transaction reports for "reportable securities" in which the access person has, or acquires, any direct or indirect beneficial ownership.[39] An access person is presumed to be a beneficial owner of securities that are held by his or her immediate family members sharing the access person's household.[40]

Rule 204A-1 treats all securities[41] as reportable securities, with five exceptions designed to exclude securities that appear to present little opportunity for the type of improper trading that the access person reports are designed to uncover:[42]

- Transactions and holdings in direct obligations of the Government of the United States.[43]
- Money market instruments — bankers' acceptances, bank certificates of deposit, commercial paper, repurchase agreements and other high quality short-term debt instruments.[44]
- Shares of money market funds.[45]
- Transactions and holdings in shares of other types of mutual funds, unless the adviser or a control affiliate acts as the investment adviser or principal underwriter for the fund.[46]
- Transactions in units of a unit investment trust if the unit investment trust is invested exclusively in unaffiliated mutual funds.[47]

The rule thus requires access persons to report shares of mutual funds advised by the access person's employer or an affiliate, and is designed to help advisers (and our examiners) identify abusive trading by personnel with access to information about a mutual fund's portfolio.[48]

D. Initial Public Offerings and Private Placements

The code of ethics must require that access persons obtain the adviser's approval before investing in an initial public offering ("IPO") or private placement.[49] Most individuals rarely have the opportunity to invest in these types of securities; an access person's IPO or private placement purchase therefore raises questions as to whether the employee is misappropriating an investment opportunity that should first be offered to eligible clients, or whether a portfolio manager is receiving a personal benefit for directing client business or brokerage.[50] Advisory firms with only one access person would not be required to have that access person pre-clear these investments.[51] We are adopting this provision as proposed.[52]

E. Reporting Violations

Under rule 204A-1, each adviser's code of ethics must require prompt internal reporting of any violations of the code.[53] Violations must be reported to the adviser's chief compliance officer. An investment adviser can choose to have supervised persons report violations to either the chief compliance officer or to other persons designated in the code of ethics. But an advisory firm that designates someone other than the chief compliance officer to receive reports of code violations from supervised persons must have procedures requiring that the chief compliance officer also receives reports periodically of all violations. We caution advisers, however, that it is incumbent on them

to create an environment that encourages and protects supervised persons who report violations. Advisers should consider how they can best prevent retaliation against someone who reports a violation; many advisers may choose to permit anonymous reporting, others may decide that retaliation constitutes a further violation of the code, and still others may find other methods to ensure that concerned employees feel safe to speak freely.

We are not, as some commenters suggested, adopting a system of fines or other penalties for violations of a code of ethics, nor are we requiring codes of ethics to include a discussion of penalties. We note, however, that many advisers do so, so that employees have a meaningful understanding of the importance of the code and of the consequences of violating it.[54]

F. Educating Employees About the Code of Ethics

Under rule 204A-1, an adviser's code of ethics must require the adviser to provide each supervised person with a copy of the code of ethics and any amendments.[55] The code must also require each supervised person to acknowledge, in writing, his receipt of those copies.[56] While some commenters opposed this requirement, most who addressed it were supportive. Some commenters went further, and recommended we mandate that advisers educate employees as to the code of ethics. An investment adviser's procedures for informing its employees about its code of ethics are critical to obtaining good compliance and avoiding inadvertent violations of the code. Although we do not believe it is necessary to require employee education as an element of codes of ethics, we expect most advisory firms will ensure that their employees have received adequate training on the principles and procedures of their codes. Many firms that have already implemented codes of ethics hold periodic orientation or training sessions with new and existing employees to remind them of their obligations under the code; others may require employees to certify that they have read and understood the code of ethics, and require annual recertification that the employee has re-read, understands and has complied with the code. We are not mandating any of these procedures, but they are among best practices for advisers.

G. Adviser Review and Enforcement

Rule 204A-1 requires that advisers maintain and enforce their codes of ethics.[57] We expect that the adviser's chief compliance officer, or persons under his authority, will have primary responsibility for enforcing the adviser's code of ethics.[58] Enforcement of the code must include reviewing access persons' personal securities reports.[59] As discussed below, we are not adopting the proposed requirement that records of these reports be maintained in an accessible electronic database. However, we question seriously whether a larger investment advisory firm will be able adequately to review such reports manually or on paper. Review of personal securities holding and transaction reports should include not only an assessment of whether the access person followed any required internal procedures, such as pre-clearance, but should also compare the personal trading to any restricted lists; assess whether the access person is trading for his own account in the same securities he is trading for clients, and if so whether the clients are receiving terms as favorable as the access person takes for himself; periodically analyze the access person's trading for patterns that may indicate abuse, including market timing; investigate any substantial disparities between the quality of performance the access person achieves for his own account and that he achieves for clients; and investigate any substantial disparities between the percentage of trades that are profitable when the access person trades for his own account and the percentage that are profitable when he places trades for clients.

H. Recordkeeping

We are amending rule 204-2 under the Advisers Act to reflect new rule 204A-1. Because the codes of ethics will already cover personal securities transaction and holdings reports, we have been able to simplify rules 204-2(a)(12) and (13) significantly.[60] As amended, rule 204-2(a)(12) requires advisers to keep copies of their code of ethics, records of violations of the code and actions taken as a result of the violations, and copies of their supervised persons' written acknowledgment of receipt of the code. As discussed earlier, rule 204A-1 requires prompt internal reporting of violations of the code of ethics,[61] but we are not requiring advisers to keep records of these whistleblower reports.[62] Commenters have persuaded us that requiring these records could have a chilling effect on employees' willingness to report violations, particularly in smaller organizations. Rule 204-2(a)(13), as amended, covers records of access persons' personal trading. It requires advisers to keep a record of the names of their access persons, the holdings and transaction reports made by access persons, and records of decisions approving access persons'

acquisition of securities in IPOs and limited offerings.

We proposed, but are not requiring, records of access persons' personal securities reports (and duplicate brokerage confirmations or account statements in lieu of those reports) to be maintained electronically in an accessible computer database. Commenters were concerned that the requirement would be unduly burdensome and would require them to input large quantities of data manually. Although we are not adopting this requirement, as discussed above, we have strong expectations that most advisers will need to maintain these records electronically in order to meet their responsibilities to review these records and monitor compliance with their codes.

The standard retention period required for books and records under rule 204-2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser.[63] Advisers must maintain the records required under amended rule 204-2(a)(12) and (13) for this standard period, subject to special holding requirements for certain categories of records as specified in amended rule 204-2(a)(12) and (13). Codes of ethics must be kept for five years after the last date they were in effect. Supervised person acknowledgements of the code must be kept for five years after the individual ceases to be a supervised person.[64] Similarly, the list of access persons must include every person who was an access person at any time within the past five years, even if some of them are no longer access persons of the adviser.[65]

I. Amendment to Form ADV

We are amending Part II of Form ADV, as proposed, to require advisers to describe their codes of ethics to clients and, upon request, to furnish clients with a copy of the code of ethics.[66] This disclosure will serve two functions: first, it will help clients understand the adviser's ethical culture and standards, how the adviser controls sensitive information and what steps it has taken to prevent employees from misusing their inside positions at clients' expense. Clients will be able to select advisers whose ethical commitment meets their expectations. Second, disclosure will act as sunlight, encouraging advisers to implement more effective procedures by exposing them to view, and encouraging advisers to adhere strictly to the procedures they disclose.[67]

J. Amendments to Rule 17j-1

As proposed, we are revising a provision of rule 17j-1 to state that no report would be required under rule 17j-1 "to the extent that" the report would duplicate information required under the Advisers Act recordkeeping rules.[68] Currently, the rule contains an exception only if "all of" the information in the report would duplicate information required to be recorded under Advisers Act rules. The reports we are requiring under the Advisers Act are not identical to those required under rule 17j-1, and this amendment avoids unnecessary duplication.

In the proposing release, we also requested comment whether, to the extent rule 204A-1 as adopted differed from rule 17j-1, we should make conforming changes to rule 17j-1. With limited exception, commenters addressing this issue expressed a desire to keep the rules as parallel as possible and suggested that rule 17j-1 be modified in some respects. We are persuaded that four changes should be made to rule 17j-1. First, rule 17j-1 as amended provides that the information in initial and annual holdings reports must be current as of a date no more than 45 days prior to the individual becoming an access person under the rule (initial holdings report), or submitting the report (annual holdings report).[69] Second, quarterly transaction reports will be due no later than 30 days after the close of the quarter, rather than 10 days as currently provided.[70] Third, quarterly transaction reports need not be submitted with respect to transactions effected pursuant to an automatic investment plan.[71]

Fourth, we are revising the definition of "access person."[72] Under the amended rule, an access person includes an advisory person of a fund or its investment adviser. We are eliminating the revenue-based test for determining whether an investment adviser's primary business is advising funds and other advisory clients. Advisers with other primary businesses used this test to exclude certain of their officers, directors and general partners from being considered access persons under the rule. We are replacing the revenue-based test with the same legal presumption we are adopting in new rule 204A-1 — that directors, officers and general partners are presumed to be access persons if the firm's primary business is investment advisory.[73]

III. EFFECTIVE DATE

The effective date of the new rule and amendments is August 31, 2004. Advisers must comply with the new rule and rule amendments

by January 7, 2005. By this compliance date, each adviser must have adopted its code of ethics and be prepared to maintain and enforce it. In addition to fundamentals such as articulating its chosen standards of conduct, each adviser's preparation will necessarily include identifying its access persons, providing a copy of the code of ethics to each supervised person and receiving their acknowledgement. Also by January 7, 2005, each adviser must have an initial holdings report from each access person, and must arrange for the submission of quarterly transaction reports. Access persons' personal securities transaction reports for the calendar quarter ended March 31, 2005 will be due no later than April 30, 2005. Until advisers begin to comply with new rule 204A-1, the amendments to rule 204-2, and the amendments to Form ADV Part II, they must continue to comply with the personal securities transaction recordkeeping requirements of our current rule 204-2(a)(12) and (13).

IV. COST-BENEFIT ANALYSIS

The Commission is sensitive to the costs and benefits resulting from our rules. The new rule we adopt today requires investment advisers to establish, maintain, and enforce codes of ethics for their supervised persons. These codes of ethics must establish standards of business conduct reflecting the fiduciary obligations of the adviser and its personnel and impose personal securities reporting measures designed to prevent access persons from abusing information about clients' securities transactions. We are also adopting related recordkeeping and client disclosure amendments under the Advisers Act and conforming amendments under the Company Act.[24]

In our Proposing Release, we carefully analyzed the costs and benefits of our proposed rule and amendments and requested comment regarding the costs and benefits. Most commenters supported requiring advisers to have written codes of ethics, although several commenters expressed reservations at the potential costs of the proposed electronic recordkeeping requirement for personal securities transactions. Only one commenter specifically addressed our cost-benefit analysis.

We are adopting the rule and amendments substantially as proposed, with some revisions in response to comments, including elimination of the proposed electronic recordkeeping requirement for personal securities transactions. We believe our original analyses regarding the benefits and costs of the rule and amendments remain accurate. Most of the benefits and costs under the new rule and amendments, however, are not quantifiable.

A. Benefits

Codes of ethics under new rule 204A-1 should benefit advisory clients as well as advisory firms. The codes will impress upon advisers' supervised persons the significance of the fiduciary aspects of their professional responsibilities, formulating these into standards of conduct to which their employers will hold these individuals accountable. Codes of ethics will also be an important part of advisers' efforts to prevent fraudulent personal trading by their supervised persons. As a result, these codes increase investor protection by forestalling supervised persons from engaging in misconduct that defrauds clients.In addition, the Form ADV amendments, which require advisers to describe their codes of ethics to clients and to furnish copies to clients upon request, put clients in a better position to evaluate whether their advisers' codes of ethics meet their expectations. If a client is not confident that an advisory firm has taken appropriate measures to prevent its personnel from placing their own interests ahead of their clients' interests, the client will be able to seek a different adviser whose measures he approves.

Rule 204A-1 will reinforce existing measures that require investment advisers to guard against employee misconduct. It goes beyond section 204A of the Advisers Act, which focuses on policies and procedures to prevent misuse of material nonpublic information by advisory firm personnel. Rule 204A-1 expands advisers' policies to address other situations in which such personnel could potentially benefit at the expense of firm clients. It also goes beyond Company Act rule 17j-1, which focuses on fraud in connection with securities held or to be acquired by an investment company advised by an adviser. Rule 204A-1 expands advisers' policies to address advisory personnel's holdings and transactions in shares of investment companies managed by the adviser. Codes of ethics will also assist advisers in meeting their obligations under Advisers Act rule 206(4)-7 to adopt policies and procedures reasonably designed to prevent their supervised persons from violating the Advisers Act.

Rule 204A-1 will benefit investment advisers by renewing their attention to their fiduciary and other legal obligations, and by increasing their vigilance against inappropriate behavior by employees. This may have the effect of diminishing the likelihood that their firms will be embroiled in securities violations, Commission enforcement

actions, and private litigation. For an adviser, the potential costs associated with a securities law violation may consist of much more than merely the fines or other penalties levied by the Commission or civil liability. The reputation of an adviser may be significantly tarnished, resulting in lost clients. Advisers may be denied eligibility to advise funds.[75] In addition, advisers could be precluded from serving in other capacities.[76]

Our revision of advisers' recordkeeping obligations for personal securities transactions will also benefit investment advisers. The amended rules are easier to understand than the complex provisions currently contained in Advisers Act rule 204-2(a)(12) and (13). The requirement that advisers maintain information about their access persons' personal securities transactions will enable firms to detect trading patterns that may indicate abuse.[77] In addition, the requirement that each access person provide initial and annual holdings reports allows investment advisers to better monitor conflicts that may arise when an access person participates in investment decisions involving securities the access person holds in his or her portfolio, and to assess whether access persons are filing accurate quarterly transaction reports.

B. Costs

The new rule and amendments will result in some additional costs for advisers. It is possible that advisers may pass these costs along to their clients in the form of advisory fees.[78] Advisers, however, are already required to maintain various policies and procedures that would constitute core elements of their codes of ethics, and therefore many of these costs are already reflected in fees clients currently pay. Advisers are required, under section 204A of the Advisers Act, to maintain and enforce written policies and procedures reasonably designed to prevent the firm or its employees from misusing material nonpublic information. Also, the approximately 1,500 advisers who advise registered investment companies currently have codes of ethics to prevent their "access persons" from abusing their access to information about the fund's securities trading, pursuant to Company Act rule 17j-1.[79] In addition, advisers are required under Advisers Act rule 206(4)-7 to adopt policies and procedures reasonably designed to prevent their supervised persons from violating the Advisers Act. Accordingly, we believe requiring written codes of ethics will impose few new costs on advisers.

Similarly, our rule to require access persons to report personal securities transactions should cause only minor cost increases. Advisers are already required to maintain records of their advisory representatives' personal securities transactions on a quarterly basis under Advisers Act rules 204-2(a)(12) and (13). The additional reporting required of access persons under our new rule — an annual report of securities holdings — should impose only minor additional costs.[80] Because most SEC-registered investment advisers have so few employees, we believe the cost of these additional reports will be minor. As of December 2003, 49% of investment advisers registered with us reported that they had five or fewer non-clerical employees, and another 18% reported that they had only six to ten non-clerical employees.[81] The majority of larger SEC-registered advisers are already subject to Company Act rule 17j-1 because they advise investment companies, and consequently obtain annual reports from their "access persons" that contain virtually the same information as would be required under our proposals. These larger firms are also in a position to limit the number of supervised persons subject to the reporting requirements, by imposing stringent controls on who obtains access to client securities information.

Many commenters expressed concern regarding the cost of the proposed requirement that advisers maintain records of personal securities transactions electronically. The Commission is not adopting the proposed electronic recordkeeping requirement.

One commenter stated that significant costs would result from the new rule's requirement that advisers review supervised persons' securities holdings and transaction reports to monitor them for abuses. The Commission recognizes that advisers will experience costs in conducting their review. The benefits to investors and to advisory firms themselves in terms of improved detection and prevention of abuses will, however, justify these costs. Moreover, the incremental cost imposed by the new rule in this regard is diminished to the extent that advisers should already be conducting such a review. An adviser's fiduciary duty of loyalty to its clients may require it to take steps to protect clients from such abuses by the adviser's personnel, and section 204A of the Advisers Act requires the adviser to enforce its policies and procedures designed to prevent misuse of material nonpublic information.

We expect only minor cost increases from the new requirement that access persons obtain their advisers' approval before investing in an initial public offerings or private placements. Our experience

administering the same requirement under Company Act rule 17j-1 has been that such proposals are infrequent, even at larger advisory firms. We also believe that our new requirement that advisers describe their codes of ethics to clients in their Form ADV and provide copies on request will impose only minor cost increases. We expect few clients will request a copy of the code, and that the cost to provide it will be minimal.

V. EFFECTS ON COMPETITION, EFFICIENCY AND CAPITAL FORMATION

Section 202(c) of the Advisers Act [15 U.S.C. 80b-2(c)] mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As discussed above, rule 204A-1 requires investment advisers to adopt codes of ethics applicable to their supervised persons. These codes of ethics must establish standards of business conduct reflecting the fiduciary obligations of the adviser and its personnel and impose personal securities reporting measures designed to prevent access persons from abusing their access to information about clients' securities transactions. We expect that the proposed rule may indirectly increase efficiency by forestalling supervised persons from engaging in misconduct that defrauds clients and harms the advisory firm, or by facilitating the adviser's early intervention to protect its clients. In addition, the existence of an industry-wide code of ethics requirement may enhance efficiency further by encouraging third parties to create new informational resources and guidance to which industry participants can refer in establishing and improving their codes.

Since the rule applies equally to all registered advisers, we do not anticipate that it introduces any competitive disadvantages. We expect that the rule may indirectly foster capital formation by bolstering investor confidence. To the extent that investors know that advisory firms have taken measures designed to prevent their supervised persons from placing their interests ahead of their clients' interests, clients are more likely to make assets available through advisers for investment in the capital markets.

VI. PAPERWORK REDUCTION ACT

As we discussed in the Proposing Release, the new rule and rule and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[82] These collections of information are mandatory. One of the collections of information is new. The title of this new collection is "Rule 204A-1," which the Commission submitted to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The OMB has approved this collection under control number 3235-0596 (expiring on March 31, 2007). The other collections of information take the form of amendments to currently approved collections titled "Rule 204-2," under OMB control number 3235-0278, and "Form ADV," under OMB control number 3235-0049. The Commission also has submitted the amendments to these collections to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The OMB has approved these collections under control numbers 3235-0278 (expiring on July 31, 2007) and 3235-0049 (expiring on July 31, 2007), respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under rule 204A-1 is necessary to establish standards of business conduct for supervised persons of investment advisers and to facilitate investment advisers' efforts to prevent fraudulent personal trading by their supervised persons. The collection of information is mandatory. The respondents are investment advisers registered with us, and certain of their supervised persons who must submit reports of their personal trading activities to their firms. These investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures.

The collection of information under rule 204-2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program

are generally kept confidential.[83] The records that an adviser must keep in accordance with rule 204-2 must generally be retained for not less than five years.[84]

The collection of information under Form ADV is necessary to provide advisory clients and prospective clients with information about an adviser's code of ethics. This collection of information is mandatory. The respondents are investment advisers registered with us. Clients of these investment advisers use the information collected to assess measures the adviser has taken to prevent its supervised persons from placing their own interests ahead of the adviser's clients' interests. Responses to the disclosure requirements are not kept confidential.

A. Rule 204A-1

Rule 204A-1 requires SEC-registered investment advisers to establish a written code of ethics for their supervised persons.[85] We estimated in the Proposing Release that each adviser would spend six hours annually, on average, documenting its code of ethics, taking into consideration that investment advisers currently maintain policies and procedures that can be the basis for their code of ethics and that advisers to investment companies already have fully developed codes of ethics. Based on our estimate in the Proposing Release that 8,019 advisers would incur the burden, the burden estimate for establishing a written code of ethics was 48,114 hours.[86]

Rule 204A-1 also requires each adviser's code of ethics to include provisions under which the adviser provides each supervised person with a copy of the code of ethics and any amendments, and obtains written acknowledgment of receipt from the supervised person. Based on our estimates that, on average, each investment adviser has 100 supervised persons,[87] will hire 5 new supervised persons each year, and each adviser will amend their codes once every other year, that advisers will have to provide a copy of their codes of ethics and obtain an acknowledgment of receipt 55 times each year.[88] We further estimated in the Proposing Release that it will take an investment adviser 0.05 hours on average for each iteration, for an annual burden of 2.75 hours per adviser and a total burden of 22,052.25 hours for all advisers related to informing supervised persons of adviser codes of ethics.[89]

Lastly, rule 204A-1 also requires each adviser's code of ethics to include provisions under which the adviser's "access persons" report their personal securities transactions and holdings to the adviser.[90] To estimate the annual paperwork burden stemming from this requirement we relied on the following assumptions: (1) advisers would treat all their non-clerical employees as access persons; (2) advisers have, on average, 84 non-clerical employees;[91] (3) initial and annual holdings reports will take 0.7 hours on average; and (4) quarterly transaction reports will take 0.6 hours on average annually.[92] Using these assumptions, we estimated in the Proposing Release that the total annual burden hours for all access persons under the proposed would be 875,675 hours.[93]

One significant amendment to rule 204A-1 that addressed commenters concerns materially reduces the paperwork burden on advisers. Because we are no longer requiring access persons to make quarterly reports when they do not have securities transactions, we are thus adopting rule 204A-1 with revised paperwork collection requirements. Accordingly, our estimate of the total annual burden for rule 204A-1 in the Proposing Release of 945,841.25 hours is reduced to 743,762.25 hours.[94]

B. Rule 204-2

In the Proposing Release, we estimated that the amendments to rule 204-2 would result in an approximate 10% net decrease from the currently approved annual aggregate collection of information burden.[95] Eliminating the requirement that advisers retain records relating to the personal securities transactions of advisory representatives reduces the annual average burden of the rule,[96] while the new recordkeeping requirements under the amendments to rule 204-2 add to the burden, as does the increase of 229 advisers registered with us.[97]

Many commenters objected to the proposed requirement to require advisers to maintain access person reports electronically. The amended rule does not include this requirement, but this amendment does not change the information collection burden estimate.[98] Our total hour burden estimate for the collection of information under rule 204-2 remains 1,537,883.8 burden hours, as we estimated in our proposal.[99]

C. Form ADV

In the proposing release, we estimated that the amendments to Form ADV (requiring advisers to describe their codes of ethics and furnish a copy upon request) would increase the annual collection burden under Form ADV by 6.95 hours per adviser.[100] One trade group commenter recommended that we allow web site posting of the code of ethics in lieu of furnishing a copy upon request. We do not believe that web access is universal at this time so we are adopting amendments to Form ADV without change and, accordingly, our total burden hour estimate remains at 102,653 burden hours.[101]

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS

The Commission proposed new rule 204A-1 and amendments to rule 204-2 and Form ADV under the Advisers Act, and amendments to rule 17j-1 under the Company Act, in a release on January 20, 2004 ("proposing release"). An Initial Regulatory Flexibility Analysis ("IRFA") was published in the proposing release. No comments were received specifically on the IRFA. The Commission has prepared the following Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604, regarding rule 204A-1 and amendments to rule 204-2 and Form ADV under the Advisers Act and amendments to rule 17j-1 under the Company Act.

A. Need for the Rule and Amendments

Sections I and II of this Release describe the background and reasons for the new rule and rule amendments. As we discussed in detail above, the rule and amendments are designed to promote compliance with fiduciary standards by advisers and their personnel.

B. Significant Issues Raised by Public Comment

The Commission received 44 letters from commenters in response to the proposing release. Commenters supported the proposal. As discussed in Section II of this Release, the Commission is adopting the new rule and rule amendments substantially as proposed with some changes to respond to commenters' suggestions. Commenters opposed a proposed requirement that advisers keep records of access persons' personal securities reports electronically in an accessible database, and the Commission is not adopting this provision of the proposal. The Commission specifically requested comments with respect to the IRFA, but did not receive any comments specifically concerning the IRFA.

C. Small Entities Subject to Rule

The new rule and rule amendments under the Advisers Act apply to all advisers registered with the Commission, (and the amendments to rule 17j-1 apply to all investment companies) including small entities. In developing the new rule and amendments, we have considered their potential effect on small entities. Under Commission rules, for purposes of the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[102] The Commission estimates that approximately 570 SEC-registered investment advisers are small entities that are affected by the new rules and rule amendments.[103]

For purposes of the Regulatory Flexibility Act, a registered investment company ("fund") is a small business or small organization (collectively, "small entity") if the fund, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[104] The Commission estimates that approximately 204 registered investment companies are small entities.[105] As discussed in Section II of this Release, the amendments to rule 17j-1 (i) allow advisers to rely on a reporting exception in the rule if the adviser already maintains duplicate information under records required by certain Advisers Act rules, (ii) exempt certain transactions from required reporting, and (iii) replace with a legal presumption a revenue-based test for the primary business of the adviser. Whether the amendments to rule 17j-1 affect small entities depends on whether the small entities rely on the reporting exception or use the exemption, and whether the small entity is primarily engaged in the business of advising investment companies or other advisory clients.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendment to Form ADV imposes a new reporting requirement on advisers, requiring that they make an additional disclosure statement in their brochures describing their codes of ethics and noting that copies of the codes are available from the adviser upon request. Although new rule 204A-1 and the other rule amendments under the Advisers Act impose no other new reporting requirements on registered advisers themselves, the new rule requires advisers' codes of ethics to impose a new reporting requirement on advisers' access persons by requiring certain new personal securities holdings and transaction reports. One rule amendment under the Company Act exempts certain personal securities transactions from existing quarterly reporting requirements.

The new rule and rule amendments create certain new recordkeeping and compliance requirements. The rule amendments impose new recordkeeping requirements by requiring that advisers maintain certain records pertaining to their codes of ethics and requirements of such codes (including records of personal securities holdings and transaction reports).[106] The new rule imposes new compliance requirements by requiring that SEC-registered investment advisers adopt codes of ethics, obtain written acknowledgments of their supervised persons' receipt of copies of the code and any amendments, review personal securities holdings and transaction reports filed by their access persons, and pre-approve investments by their access persons in IPOs and limited offerings.

Small entities registered with the Commission as investment advisers are for the most part subject to these new reporting, recordkeeping and compliance requirements to the same extent as larger advisers. With regard to reporting of securities holdings and transactions and to pre-approvals of certain investments, however, certain small advisers, possibly including some that are small entities, are not subject to the new requirements. Additionally, we anticipate that most advisers will very rarely need to address violations to their codes of ethics and, similarly, should infrequently be asked by an access person to consider pre-approval of an investment in an IPO or limited offering. Small advisers will likely deal with violations or IPO and limited offering pre-approvals on an even more limited scale due to the smaller size of their operations. Furthermore, it is important to note that some of the new reporting, recordkeeping and compliance requirements replace, clarify or simplify existing requirements to which advisers, including those that are small entities, are already subject. To the extent that such requirements clarify or simplify existing requirements, the rule and amendments may actually alleviate reporting, recordkeeping, or compliance burdens on advisers, including those that are small entities.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities.[107] In connection with the new rule and rule amendments, the Commission considered the following alternatives: (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for such small entities.

With respect to the first alternative, the Commission believes that the flexibility built into the rules adequately addresses different compliance and reporting requirements. The Commission is not prescribing uniform codes of ethics, but gives each adviser the flexibility to design its own code in light of the firm's size and operational structure, and the particular types of conflicts encountered by the firm in connection with its business and clients. The amendments to rule 204-2 permit the use of brokerage confirmations and statements in lieu of separate reports, at the firm's option.

With respect to the second alternative, the Commission believes that clarification, consolidation, or simplification of the compliance and recordkeeping requirements under the rule for small entities unacceptably compromises the investor protections of the rule. Rule 204A-1 sets out minimum requirements for advisers' codes of ethics, which are designed to promote compliance with fiduciary standards by advisers and their personnel. Eliminating some or all of these requirements would potentially impede achievement of that objective. Similarly, in establishing the categories of records to be retained under amendments to rule 204-2, the records described by the rule are

necessary for the Commission to evaluate advisers' compliance with rule 204A-1 as part of the Commission's inspection program.

With respect to the third alternative, the Commission believes that the compliance and reporting requirements contained in the new rule and rule amendments already appropriately use performance standards instead of design standards. The rule enumerates few elements required for codes of ethics, allowing all firms, including small firms, to tailor the remainder of their codes of ethics to the nature and scope of their business. Rule 204A-1 does not specify what standard of conduct an adviser must require of its supervised persons, but requires only that the adviser articulate a standard in its code of ethics. Similarly, the rule does not specify which supervised persons should have access to nonpublic information about client recommendations, trading and holdings, and does not prohibit or restrict personal securities transactions by access persons, but requires only that access persons report their personal securities trading and holdings to the adviser. Furthermore, the recordkeeping requirements under rule 204-2 do not specify the means by which an adviser must keep records to demonstrate its compliance with the rule.

Finally, with respect to the fourth alternative, the Commission notes that the rule exempts advisers with only one access person from personal securities reporting and pre-clearance of investments in IPOs and private placements. The codes of ethics are designed to promote advisers' fulfillment of their fiduciary duty to clients and to guard against personal securities trading by advisers' access persons that may be contrary to clients' interests. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Advisers Act to exempt small entities further from the rule and rule amendments or to specify different requirements for small entities.

VIII. STATUTORY AUTHORITY

We are adopting amendments to rule 17j-1 pursuant to our authority set forth in sections 17(j) and 38(a) of the Investment Company Act [15 U.S.C. 80a-17(j) and 80a-37(a)] and sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b-4 and 80b-11(a)].

We are adopting amendments to rule 204-2 pursuant to our authority set forth in sections 204 and 206(4) of the Advisers Act [15 U.S.C. 80b-4 and 80b-6(4)].

We are adopting rule 204A-1 pursuant to our authority set forth in sections 202(a)(17), 204A, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b-2(a)(17), 80b-4a, 80b-6(4) and 80b-11(a)].

We are adopting amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 77sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 78a-37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3(c)(1), 80b-4, and 80b-11(a)].

TEXT OF RULES AND FORM AMENDMENTS

List of Subjects in 17 CFR Parts 270, 275 and 279

Investment companies, Reporting and recordkeeping requirements, Securities.

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270 — RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

AUTHORITY: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

2. Section 270.17j-1 is amended by:

a. Revising paragraph (a)(1)(i);

b. Revising paragraph (a)(2)(i),

c. Adding new paragraph (a)(11);

d. Revising the introductory text of paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii);

e. Revising paragraph (d)(2)(iv); and

f. Adding new paragraph (d)(2)(vi).

The additions and revisions to read as follows:

§ 270.17j-1 Personal investment activities of investment company personnel.

(a) * * *

(1) * * *

(i) Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.

* * * * *

(2) * * *

(i) Any director, officer, general partner or employee of the Fund or investment adviser (or of any company in a control relationship to the Fund or investment adviser) who, in connection with his or her regular functions or duties, makes, participates in, or obtains information regarding, the purchase or sale of Covered Securities by a Fund, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

* * * * *

(11) *Automatic Investment Plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An Automatic Investment Plan includes a dividend reinvestment plan.

* * * * *

(d) * * *

(1) * * *

(i) *Initial Holdings Reports*. No later than 10 days after the person becomes an Access Person (which information must be current as of a date no more than 45 days prior to the date the person becomes an Access Person):

* * * * *

(ii) *Quarterly Transaction Reports*. No later than 30 days after the end of a calendar quarter, the following information:

* * * * *

(iii) *Annual Holdings Reports*. Annually, the following information (which information must be current as of a date no more than 45 days before the report is submitted):

* * * * *

(2) * * *

(iv) An Access Person to an investment adviser need not make a separate report to the investment adviser under paragraph (d)(1) of this section to the extent the information in the report would duplicate information required to be recorded under § 275.204-2(a)(13) of this chapter.

* * * * *

(vi) An Access Person need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section with respect to transactions effected pursuant to an Automatic Investment Plan.

PART 275 — RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The general authority citation for Part 275 is revised to read in part as follows:

AUTHORITY: 15 U.S.C. 80b-2(a)(11)(F), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

* * * * *

4. Section 275.204-2 is amended by revising paragraphs (a)(12), (a)(13), and (e)(1) to read as follows:

§ 275.204-2 Books and records to be maintained by investment advisers.

(a) * * *

(12)(i) A copy of the investment adviser's code of ethics adopted and implemented pursuant to § 275.204A-1 that is in effect, or at any time within the past five years was in effect;

(ii) A record of any violation of the code of ethics, and of any action taken as a result of the violation; and

(iii) A record of all written acknowledgments as required by § 275.204A-1(a)(5) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.

(13)(i) A record of each report made by an access person as required by § 275.204A-1(b), including any information provided under paragraph (b)(3)(iii) of that section in lieu of such reports;

(ii) A record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and

(iii) A record of any decision, and the reasons supporting the decision, to approve the acquisition of securities by access persons under § 275.204A-1(c), for at least five years after the end of the fiscal year in which the approval is granted.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

5. Section 275.204A-1 is added to read as follows:

§ 275.204A-1 Investment adviser codes of ethics.

(a) *Adoption of code of ethics.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), you must establish, maintain and enforce a written code of ethics that, at a minimum, includes:

(1) A standard (or standards) of business conduct that you require of your supervised persons, which standard must reflect your fiduciary obligations and those of your supervised persons;

(2) Provisions requiring your supervised persons to comply with applicable federal securities laws;

(3) Provisions that require all of your access persons to report, and you to review, their personal securities transactions and holdings periodically as provided below;

(4) Provisions requiring supervised persons to report any violations of your code of ethics promptly to your chief compliance officer or, provided your chief compliance officer also receives reports of all violations, to other persons you designate in your code of ethics; and

(5) Provisions requiring you to provide each of your supervised persons with a copy of your code of ethics and any amendments, and requiring your supervised persons to provide you with a written acknowledgment of their receipt of the code and any amendments.

(b) *Reporting requirements.*

(1) *Holdings reports.* The code of ethics must require your access persons to submit to your chief compliance officer or other persons you designate in your code of ethics a report of the access person's current securities holdings that meets the following requirements:

(i) *Content of holdings reports.* Each holdings report must contain, at a minimum:

(A) The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any

direct or indirect beneficial ownership;

(B) The name of any broker, dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

(C) The date the access person submits the report.

(ii) *Timing of holdings reports*. Your access persons must each submit a holdings report:

(A) No later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person.

(B) At least once each 12-month period thereafter on a date you select, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

(2) *Transaction reports*.The code of ethics must require access persons to submit to your chief compliance officer or other persons you designate in your code of ethics quarterly securities transactions reports that meet the following requirements:

(i) *Content of transaction reports*. Each transaction report must contain, at a minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

(A) The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

(B) The nature of the transaction (*i.e.*, purchase, sale or any other type of acquisition or disposition);

(C) The price of the security at which the transaction was effected;

(D) The name of the broker, dealer or bank with or through which the transaction was effected; and

(E) The date the access person submits the report.

(ii) *Timing of transaction reports*. Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

(3) *Exceptions from reporting requirements*. Your code of ethics need not require an access person to submit:

(i) Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

(ii) A transaction report with respect to transactions effected pursuant to an automatic investment plan;

(iii) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that you hold in your records so long as you receive the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(c) *Pre-approval of certain investments*. Your code of ethics must require your access persons to obtain your approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(d) *Small advisers*. If you have only one access person (*i.e.*, yourself), you are not required to submit reports to yourself or to obtain your own approval for investments in any security in an initial public offering or in a limited offering, if you maintain records of all of your holdings and transactions that this section would otherwise require you to report.

(e) *Definitions*. For the purpose of this section:

(1) *Access person* means:

(i) Any of your supervised persons:

(A) Who has access to nonpublic information regarding any clients' purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund, or

(B) Who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic.

(ii) If providing investment advice is your primary business, all of your

directors, officers and partners are presumed to be access persons.

(2) *Automatic investment plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An automatic investment plan includes a dividend reinvestment plan.

(3) *Beneficial ownership* is interpreted in the same manner as it would be under § 240.16a-1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by paragraph (b) of this section may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

(4) *Federal securities laws* means the Securities Act of 1933 (15 U.S.C. 77a-aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a — mm), the Sarbanes-Oxley Act of 2002 (Pub. L. 107-204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311 — 5314; 5316 — 5332) as it applies to funds and investment advisers, and any rules adopted thereunder by the Commission or the Department of the Treasury.

(5) *Fund* means an investment company registered under the Investment Company Act.

(6) *Initial public offering* means an offering of securities registered under the Securities Act of 1933 (15 U.S.C. 77a), the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d))

(7) *Limited offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(6) (15 U.S.C. 77d(2) or 77d(6)) or pursuant to §§ 230.504, 230.505, or 230.506 of this chapter.

(8) *Purchase or sale of a security* includes, among other things, the writing of an option to purchase or sell a security.

(9) *Reportable fund* means:

(i) Any fund for which you serve as an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(20)) (*i.e.*, in most cases you must be approved by the fund's board of directors before you can serve); or

(ii) Any fund whose investment adviser or principal underwriter controls you, is controlled by you, or is under common control with you. For purposes of this section, *control* has the same meaning as it does in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(9)).

(10) *Reportable security* means a security as defined in section 202(a)(18) of the Act (15 U.S.C. 80b-2(a)(18)), except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

(iii) Shares issued by money market funds;

(iv) Shares issued by open-end funds other than reportable funds; and

(v) Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

PART 279 — FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

6. The authority citation for Part 279 continues to read as follows:

AUTHORITY: The Investment Advisers Act of 1940, 15 U.S.C. 80b-1, *et seq.*

7. Form ADV (referenced in § 279.1) is amended by:

In Part II, at the end of Item 9 add "Describe, on Schedule F, your code of ethics, and state that you will provide a copy of your code of ethics to any client or prospective client upon request."

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

By the Commission.

Margaret H. McFarland

Deputy Secretary

July 2, 2004

[1] Unless otherwise noted, when we refer to rule 17j-1 or any paragraph of the rule, we are referring to 17 CFR 270.17j-1 of the Code of Federal Regulations in which the rule is published, and when we refer to rule 204-2 or any paragraph of the rule, we are referring to 17 CFR 275.204-2 of the Code of Federal Regulations in which the rule is published.

[2] *Investment Adviser Codes of Ethics*, Investment Advisers Act Release No. 2209 (Jan. 20, 2004) [69 FR 4040 (Jan. 27, 2004)].

[3] *See, e.g.*, *In the Matter of Strong Capital Management, Inc.*, Investment Advisers Act Release No. 2239 (May 20, 2004) ("*Strong*") (adviser disclosed material nonpublic information about fund portfolio holdings to hedge fund, and permitted own chairman and hedge fund to engage in undisclosed market timing of funds managed by adviser); *In the Matter of Massachusetts Financial Services Co.*, Investment Advisers Act Release No. 2213 (Feb. 5, 2004) (2 senior executives of adviser permitted undisclosed market timing in certain funds in the complex managed by the adviser); *In the Matter of Alliance Capital Management, L.P.*, Investment Advisers Act Release No. 2205 (Dec. 18, 2003) ("*Alliance*") (disclosure of material nonpublic information about certain mutual fund portfolio holdings permitted favored client to profit from market timing); *In the Matter of Robert T. Littell and Wilfred Meckel*, Investment Advisers Act Release No. 2203 (Dec. 15, 2003) (portfolio manager of hedge fund made misrepresentations to investors and potential investors concerning performance, management oversight, and risk management practices); *In the Matter of Zion Capital Management LLC and Ricky A. Lang*, Investment Advisers Act Release No. 2200 (Dec. 11, 2003) ("*Zion*") (adviser favored an advisory account in which he had an interest, allocating profitable trades to this account while allocating numerous unprofitable trades to another client); *In the Matter of George F. Fahey*, Investment Advisers Act Release No. 2196 (Nov. 24, 2003) (president of investment adviser made misrepresentations to clients as to risk of investment strategy and value of investments); *In the Matter of Putnam Investment Management LLC*, Investment Advisers Act Release No. 2192 (Nov. 13, 2003) ("*Putnam*") (adviser failed to reasonably supervise employees who market timed funds managed by the adviser and failed to disclose their timing activities); *In the Matter of Wendell D. Belden*, Investment Advisers Act Release No. 2191 (Nov. 6, 2003) (associate of adviser defrauded clients by misleading them about their investment options and the security of their invested principal and by investing their money in a manner calculated to enrich himself at their expense); *In the Matter of James Patrick Connelly, Jr.*, Investment Advisers Act Release No. 2183 (Oct. 16, 2003) (adviser's vice chairman permitted more than a dozen clients to market time certain funds in the complex managed by the adviser in exchange for stable investments in other funds in the complex); *In the Matter of Marshall E. Melton and Asset Management & Research, Inc.*, Investment Advisers Act Release No. 2151 (Jul. 25, 2003) (investment adviser made material misrepresentations to its clients to induce them to invest their funds in limited liability companies controlled by adviser's principal).

[4] Rule 204A-1(a)(1).

[5] Rule 204A-1(a)(1) and (2).

[6] Many professional and trade organizations, such as the Financial Planning Association, the Association for Investment Management and Research, the Certified Financial Planner Board of Standards, the Investment Counsel Association of America, and the American Institute of Certified Public Accountants, have developed professional codes of ethics or model codes for their members' use.

[7] While advisers are also free to structure their codes as best fits their organizations, an adviser using multi-document codes should ensure that all parts are integrated and understandable, so it is clear to supervised persons that these documents constitute the firm's code of ethics.

[8] *See* joint comment letter from the Ethics Resource Center and Thelen Reid & Priest LLP (Apr. 6, 2004) (available from the Commission's public reference room in File No. S7-04-04).

[9] Proposed rule 204A-1(a)(3).

[10] Section 204A [15 U.S.C. 80b-4a]. Advisers' required procedures under section 204A usually also contain a summary of insider trading law and procedures for determining whether information has become public. These may be distinct from the adviser's section 204A procedures to guard against misuse of material nonpublic information about client recommendations, trading, and holdings. Many advisers may choose to integrate their section 204A procedures into their codes, but they are not required to do so.

[11] *See, e.g., Strong, supra* note 3 (adviser that released nonpublic information about fund portfolio holdings to select market timers violated section 204A); *Alliance, supra* note 3 (adviser that released, to select market timers, material nonpublic information concerning portfolio holdings of fund managed by the adviser violated section 204A); *Putnam, supra* note 3 (adviser whose portfolio manager traded on nonpublic information regarding portfolio holdings and transactions of fund managed by the adviser violated section 204A).

[12] As we noted in our proposing release, the obligation to safeguard sensitive client information would not preclude the adviser from providing necessary information to, for example, persons providing services to the adviser or the account such as brokers, accountants, custodians, and fund transfer agents, or in other circumstances when the client consents. In addition, if the adviser has supervised persons who are also associated persons of a broker-dealer, self-regulatory organization rules may require the broker-dealer to have certain information about the adviser's client accounts. Two commenters noted that, under certain circumstances, NASD rule 3040 requires the broker-dealer to supervise its registered representatives' activities for advisory accounts.

[13] Rule 204A-1(a)(3). We are not suggesting that the chief compliance officer must personally review all reports. In addition, we expect most advisers will designate another individual to review personal securities reports submitted by the chief compliance officer.

[14] Rule 204A-1(a)(3).

[15] Rule 17j-1 requires that fund advisers adopt written codes of ethics and have procedures in place to prevent their personnel from abusing their access to information about the fund's securities trading, and requires "access persons" to submit reports periodically containing information about their personal securities holdings and transactions. Rule 17j-1(c)(1) and (d) under the Investment Company Act. Most funds, and therefore most fund advisers, must have codes of ethics under rule 17j-1. Money market funds and funds that invest only in certain non-covered securities, however, are not required to adopt codes of ethics under rule 17j-1. Rule 17j-1(c)(1)(i). As of May 1, 2004, approximately 1500 advisers, or 18 percent of the firms registered with us, reported that they manage fund portfolios.

[16] For example, pre-clearance of personal securities transactions, *see infra* note 18 and accompanying text, is mandated to some degree in most advisory firms that have adopted a code of ethics.

[17] In addition to personal securities transaction procedures, the following is a list of other provisions that many advisers include in codes of ethics, and that advisers should consider when deciding what to include in their own codes: Limitations on acceptance of gifts; limitations on the circumstances under which an access person may serve as a director of a publicly traded company; detailed identification of who is considered an access person within the organization; and procedures for the firm and its compliance personnel to review periodically the code of ethics as well as to review reports made pursuant to it.

[18] In some organizations, all personnel must pre-clear all trades with the firm's compliance personnel. In other firms, only access persons must pre-clear, or only certain types of transactions must be pre-cleared. Some advisers have begun using compliance software to pre-clear personal trades on an automated basis, rather than have compliance personnel process the requests. Pre-clearance procedures may also identify who has authority to approve a trade request, the length of time an approval is valid, and procedures for revoking an approval, as well as procedures for verifying post-trade reports or duplicate confirmations against the log of pre-clearance approvals.

[19] Advisers may use blackout periods to guard against employees trading ahead of clients or on the same day as clients' trades are placed. *See In the Matter of Roger Honour*, Investment Advisers Act Release No. 1527 (Sept. 29, 1995). Prohibiting personal trading at the same time as client trading can also serve as a measure to prevent employees from allocating trades in a manner that defrauds clients. *See, e.g., In the Matter of Nicholas-Applegate Capital Management*, Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (adviser's senior trader placed personal trades alongside trades for employee

plan, allocating profitable trades to his personal account and unprofitable ones to the employee plan's account); *SEC v. Moran*, 922 F.Supp. 867 (S.D.N.Y. 1996) (advisory principal allocated shares to his family and personal accounts even though additional shares would need to be purchased for client accounts on the following day at higher prices). The Commission has previously indicated its approval of blackout periods for advisory personnel. *See* Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth (1966) ("PPI Report") at 196 (noting with approval that the staff's 1962-63 Special Study of the Securities Markets had concluded that all funds and advisers should have policies precluding certain insiders from buying and selling securities at the same time as a fund they manage).

[20] In several of our enforcement cases involving personal trading, advisory personnel took investment opportunities for themselves (or for an account in which they had an interest) instead of for clients, even where the investment became available only because of the client's other securities purchases. *See In the Matter of Joan Conan*, Investment Advisers Act Release No. 1446 (Sept. 30, 1994); *In the Matter of Kemper Financial Services, Inc.*, Investment Advisers Act Release No. 1494 (June 6, 1995).

[21] Advisers that prohibit short-term trading generally mandate disgorgement of any profits if an employee effects a short-term trade.

[22] Initial and annual holdings reports will facilitate an adviser's assessment of whether an individual's personal securities holdings present a conflict of interest.

[23] Rule 204A-1(a)(3). Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b-2(a)(25)] defines "supervised person." An adviser's supervised persons are its partners, officers, directors (or other persons occupying a similar status or performing similar functions) and employees, as well as any other persons who provide advice on behalf of the adviser and are subject to the adviser's supervision and control.

[24] Rule 204A-1(e)(1).

[25] *Id.* A supervised person would not be an access person solely because he has nonpublic information regarding the portfolio holdings of a client that is not an investment company. The individual is unlikely to be able to exploit that information in any way that would benefit himself.

[26] Rule 17j-1 includes individuals as access persons only if they make, participate in, or *obtain* information regarding, the purchase and sale of the fund's securities, or if their functions relate to the making of any recommendations for such transactions. Rule 17j-1(a)(1)(i), 17j-1(a)(2)(i).

[27] While the definition of "access person" under rule 204A-1 will not require all employees to submit personal securities transaction reports, some firms may elect to require reporting from all personnel. This approach, while not required, offers certainty as to whether reports are required from a given individual.

[28] As proposed, persons who are not "supervised persons" of the adviser would not be access persons. This represents a change from the current adviser recordkeeping rule, rule 204-2(a)(12). Commenters supported the change.

[29] Rule 204A-1(e)(1)(ii).

[30] Rule 17j-1(a)(1)(i)(A) and (B). *See also* current rule 204-2(a)(13)(iii)(D). Today we are also adopting parallel changes to 17j-1 to remove this revenue-based test. *See infra* Section II.I of this Release.

[31] Rule 204A-1(b)(1).

[32] Rule 17j-1(d)(1)(i) and (iii). As under rule 17j-1, an access person can satisfy the initial or annual holdings report requirement by timely filing and dating a copy of a securities account statement listing all their securities holdings, if the statement provides all information required by the rule and the code of ethics. Similarly, if a supervised person has previously provided such statement to the adviser, or has previously been reporting or supplying brokerage confirms for all securities transactions and the adviser has maintained them as a composite record containing all the requisite information, the access person can satisfy the initial or annual holdings report requirement by timely confirming the accuracy of the statement or composite in writing. *See Personal Investment Activities of Investment Company Personnel*, Investment Company Act Release No. 23958 (Aug. 20, 1999) [64 FR 46821 (Aug. 27, 1999)] ("Rule 17j-1 1999 Adopting Release"), at n. 34. The rule would not, however, permit an access

person to avoid filing an initial or annual holdings report simply because all information has been provided over a period of time in various transaction reports. One reason for requiring a holdings report is so that the adviser's compliance personnel and our examiners have ready access to a "snapshot" of the access person's holdings and are not required to piece the information together from transaction reports.

[33] We modeled our proposal on requirements in rule 17j-1. We are today adopting amendments to these requirements in rule 17j-1 to conform them to rule 204A-1. *See infra* Section II.J of this Release.

[34] Rule 204A-1(b)(2). In response to comments, we extended the deadline from the 10-day deadline we had proposed, and we have made similar changes to rule 17j-1. *See infra* Section II.J of this Release.

[35] The rule does not require all of the information required in a transaction report to appear in the duplicate trade confirmation or account statement. That is, some of the required information could appear in the confirmation or statement, and the remainder could be submitted by access persons in their reports.

[36] Rule 204A-1(b)(3)(ii). However, any transaction that overrides the pre-set schedule or allocations of the automatic investment plan must be included in a quarterly transaction report. We are also adopting a parallel exception under rule 17j-1. *See infra* Section II.J of this Release.

[37] Rule 204A-1(b)(3)(i).

[38] Rule 204A-1(d). We had proposed this exception for firms that have only one *supervised* person, because that individual would otherwise be required to make reports to himself; commenters suggested that we should extend to firms with one *access* person, because these are still essentially one-man shops. We agree that a sole proprietor who has a clerical assistant or bookkeeper for his business should still be able to use this exception so long as that employee is not also an access person. These small advisers would still be subject to the other provisions of the rule, including the requirements to adopt a code of ethics and safeguard material nonpublic client information.

[39] Rule 204A-1(b)(1)(i)(A) and (b)(2)(i). Rule 204A-1 provides that beneficial ownership is to be interpreted in the same manner as for purposes of rule 16a-1(a)(2) under the Securities Exchange Act of 1934 in determining whether a person has beneficial ownership of a security for purposes of section 16 of that Act. Rule 204A-1(e)(3). This is the same as the standard under rule 17j-1. Rule 17j-1 1999 Adopting Release, *supra* note 32. It is also the standard used under our current adviser recordkeeping rule. *See* rule 204-2(a)(12)(iii)(B). Rule 204A-1, again like rule 17j-1, provides that any required report may contain a disclaimer of beneficial ownership by the person making the report.

[40] Rule 16a-1(a)(2)(ii)(A) [17 CFR 240.16a-1(a)(2)(ii)(A)].

[41] The term "security" is defined in section 2(a)(18) of the Act. [15 US 80b-2(a)(18)].

[42] Rule 204A-1(e)(10). No investment adviser is required to take advantage of these exceptions; an adviser is free to require its access persons to report their holdings and transactions in *all* securities, notwithstanding these exceptions.

[43] Rule 204A-1(e)(10)(i).

[44] Rule 204A-1(e)(10)(ii). We have interpreted "high quality short-term debt instrument" to mean any instrument having a maturity at issuance of less than 366 days and which is rated in one of the highest two rating categories by a Nationally Recognized Statistical Rating Organization, or which is unrated but is of comparable quality. *Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and Their Investment Advisers and Principal Underwriters*, Investment Company Act Release No. 21341 (Sept. 8, 1995) [60 FR 47844 (Sept. 14, 1995)] (proposing amendments to rule 17j-1) at n. 66.

[45] Rule 204A-1(e)(10)(iii).

[46] Rule 204A-1(e)(9) and (10)(iv). Transactions and holdings in shares of closed-end investment companies would be reportable regardless of affiliation. The exception extends only to open-end funds registered in the U.S.; therefore, transactions and holdings in offshore funds would also be reportable.

[47] Rule 204A-1(e)(10)(v). This exception is aimed at variable

insurance contracts that are funded by insurance company separate accounts organized as unit investment trusts. Such separate accounts typically are divided into subaccounts, each of which invests exclusively in shares of an underlying open-end fund. Commenters suggested that these investments be excepted to the same extent as the underlying open-end funds.

[48] Portfolio managers' short-term trading in fund shares has been an issue in our recent enforcement actions. *See, e.g., Putnam, supra* note 3.

[49] Rule 204A-1(c).

[50] *See, e.g., In the Matter of Monetta Financial Services, Inc., Robert S. Bacarella, and Richard D. Russo*, Investment Advisers Act Release No. 2136 (Jun. 9, 2003) (investment adviser to mutual funds improperly allocated IPO shares in which funds could have invested to certain access persons of the funds without adequate disclosure or approval); *In the Matter of Ronald V. Speaker and Janus Capital Corporation*, Investment Company Act Release No. 22461 (Jan. 13, 1997) (portfolio manager made a profit on same day purchase and sale of debentures in which fund could have invested, and failed to disclose transactions to the fund or obtain prior consent of the fund); *U.S. v. Ostrander*, 999 F.2d 27 (2d Cir. 1993) (affirming conviction of portfolio manager for accepting unlawful compensation where she purchased privately offered warrants of a company whose securities she acquiredfor the fund).

[51] Rule 204A-1(d). Firms with only one access person are generally one-person operations. It would make little sense to require the individual to pre-clear investments with himself. *See supra* note 38.

[52] Advisers that elect to prohibit their access persons from investing in IPOs and private placements would not have to include this pre-clearance provision.

[53] Rule 204A-1(a)(4). We adopted a similar provision under section 406 of the Sarbanes-Oxley Act. *See* Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Securities Act Release No. 8177 (Jan 23, 2003) [68 FR 5109 (Jan. 31, 2003)].

[54] Our understanding is that penalties for violations vary from one firm to another, and depend on the type of violation involved. Employees may be required to cancel trades, disgorge profits or sell positions at a loss, and may face internal reprimands, fines, or firing.

[55] Rule 204A-1(a)(5).

[56] *Id.* These written acknowledgements may be made electronically.

[57] Rule 204A-1(a). Some firms may, in their code, reserve the right to waive compliance with certain of the code's provisions. Of course, if a code provision is required by new rule 204A-1 (or by rule 17j-1), the advisory firm cannot waive a supervised person's compliance with that provision.

[58] Advisers to investment companies must provide the investment company's board of directors with an annual report describing any issues arising under the code of ethics. See rule 17j-1(c)(2)(ii). Such annual report must include a discussion of any material violations of the code and whether any waivers that might be considered important by the board were granted during the period.

[59] Rule 204A-1(a)(3).

[60] Currently, these sections lay out fairly complex requirements for the information that an adviser must keep regarding personal securities transactions of "advisory representatives," which include the adviser's personnel, directors, officers and partners.

[61] *See supra* note 53.

[62] An adviser could, for example, record the facts and circumstances surrounding a violation of the code, but omit mention of the employee who brought the problem to the adviser's attention.

[63] Rule 204-2(e) (retention period of five years from the end of the fiscal year during which the last entry was made on such record).

[64] One commenter suggested that the acknowledgement be kept only for five years after it was made. We are not adopting this suggestion, because it could mean that an adviser would have no records of acknowledgement from long-term employees.

[65] In addition, records supporting decisions to approve access persons' acquisitions of IPOs or private placements must be retained for at

least five years after the end of the fiscal year in which the approval is granted.

[66] We are amending Item 9 of Form ADV Part II, which asks whether the adviser or a "related person" (that is, a person that controls the adviser, is controlled by the adviser, or is under common control with the adviser) participates or has an interest in client transactions. In April 2000, we proposed a new version of Part 2 that called for a narrative disclosure brochure, and which moved this disclosure topic to Item 10.

[67] An investment adviser that disclosed its policies and procedures but then materially deviated from them may be subject to action under section 206 of the Advisers Act.

[68] Rule 17j-1(d)(2)(iv).

[69] Rule 17j-1(d)(1)(i) and (iii).

[70] Rule 17j-1(d)(1)(ii).

[71] Rule 17j-1(d)(2)(vi).

[72] Rule 17j-1(a)(1)(i).

[73] In addition, the directors, officers and general partners of a fund are presumed to be access persons of the fund.

[74] We are adopting amendments to rule 204-2, the recordkeeping rule under the Advisers Act, to address documentation of advisers' compliance with rule 204A-1. We are also amending Part II of Form ADV, which specifies certain information investment advisers must disclose to their clients, to require advisers to include a discussion of their codes of ethics and make copies available to clients upon request. We are adopting amendments to rule 17j-1, the code of ethics rule under the Company Act, to conform certain of its provisions to those in new rule 204A-1.

[75] Section 9(a) of the Investment Company Act [15 U.S.C. 80a-9(a)] prohibits a person from serving as an adviser to a fund if, within the past 10 years, the person has been convicted of certain crimes or is subject to an order, judgment, or decree of a court prohibiting the person from serving in certain capacities with a fund, or prohibiting the person from engaging in certain conduct or practice.

[76] *See, e.g.*, 29 U.S.C. 1111(a) (prohibiting a person from acting in various capacities for an employee benefit plan, if within the past 13 years, the person has been convicted of, or has been imprisoned as a result of, any crime described in section 9(a)(1) of the Investment Company Act [15 U.S.C. 80a-9(a)(1)]).

[77] Although the Commission is not adopting the proposed requirement that advisers maintain these records electronically, as previously noted we have strong expectations that most advisers will need to maintain these records electronically in order to meet their responsibilities to review these records and monitor compliance with their codes.

[78] We understand, however, that many advisers have already adopted codes of ethics for their firm and their employees. We are unaware whether these firms charge higher advisory fees than firms that have not yet adopted codes of ethics.

[79] Based on our records of information submitted to us by investment advisers in Part 1 of Form ADV through December 10, 2003, approximately 1,500 advisers report that they manage portfolios for investment companies.

[80] The Commission is not adopting its proposal to require quarterly reports indicating that no transactions were effected.

[81] This is based on Form ADV data (under Item 5.A of Part 1A) submitted to us by 8,019 SEC-registered investment advisers through December 9, 2003.

[82] 44 U.S.C. 3501 to 3520.

[83] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b-10(b)].

[84] *See* rule 204-2(e) [17 CFR 275.204-2(e)].

[85] Rule 204A-1(a).

[86] 8,019 advisers x 6 hours = 48,114 total annual hours.

[87] This estimate is based on each adviser having on average 84

non-clerical and 16 clerical employees.

[88] Over any two-year period, 100 copies of amendments in year 1 + 10 copies of complete code for new supervised persons in year 1 through 2 = 110 copies, divided by 2 years = 55 copies.

[89] 0.05 hours per copy x 55 copies per year = 2.75 hours. 2.75 hours x 8,019 investment advisers = 22,052.25 hours total.

[90] Rule 204A-1(a)(3).

[91] This average is based on Form ADV data that asks for the total number of employees. We believe this estimate overstates the typical number of access persons for an adviser, since the data is skewed significantly higher by the largest (in terms of number of employees) 100 advisers.

[92] We estimated in the Proposing Release that quarterly transaction reports would take 0.6 hours per access person. In a change from the proposed rule, the adopted rule does not require quarterly reports for any quarter in which the access person makes no security transactions. In the Proposing Release, we assumed for purposes of estimating access person reporting that access persons would typically file transaction reports indicating no transactions in 3 out of the 4 quarters. Thus we have reduced by half the amount of time allocated for access person transaction reporting, as discussed below.

[93] (0.7 hours holdings report + 0.6 hours transactions report) x (84 access persons x 8,019 investment advisers) = 875,675 hours.

[94] Eliminating these quarterly reports decreases the burden of quarterly transaction reporting on access persons from 0.6 hours to 0.3 hours, or a total of 202,079 hours (0.3 hours x 84 access persons x 8,019 advisers = 202,079). Our revised total burden is as follows: 48,114 hours by advisers to record their codes of ethics + 673,596 hours for reporting by access persons + 22,052.25 hours for advisers to deliver copies of codes and amendments = 743,762.25.

[95] Prior to the adoption of the amendments herein, the approved annual aggregate information collection burden was 1,651,324.2 hours (based on 7,790 advisers) or 211.98 hours per firm for rule 204-2.

[96] In the Proposing Release we estimated that the reduction would be 25.2 hours per firm (0.3 hours per access person to record the transactions x 84 access persons per firm). This results in a reduction on a per firm basis to 186.78 hours (211.98 − 25.2).

[97] The new recordkeeping obligations under the rule include the maintenance of access person holding and quarterly transaction reports, retention of the codes of ethics, supervised person acknowledgments, records of the names of the firm's access persons, records of any violation of the codes of ethics and any action taken, and records of any decision under rule 204A-1 to permit an access person to invest in an initial public offering or private placement. In the Proposing Release we estimated that these new collections would add 5 hours on average per adviser to the annual hour burden of the rule. This results in a per firm annual burden estimate of 191.78 hours (186.78 + 5).

[98] In the Proposing Release, we estimated no incremental burden in connection with the proposed requirement for advisers to maintain access person reports electronically. We estimated advisory firms would be able to use their existing computer software, taking transaction data electronically from the same broker-dealers that advisory firms use to obtain electronic information about client transactions.

[99] 191.78 hours per adviser x 8,019 advisers = 1,537,883.8 hours.

[100] 0.25 hours preparing a description of the code of ethics + 6.7 hours responding to requests for copies of the code of ethics (based on a 10% request rate by the 670 average number of clients per adviser and 0.1 hours for delivery).

[101] (0.25 hours + 6.7 hours) x 8,019 advisers =55,732 hours. 46,921 hours (existing total) + 55,732 hour increase = 102,653 hours.

[102] 17 CFR 275.0-7(a).

[103] This estimate is based on the information submitted by SEC-registered advisers in Part 1A of Form ADV as of May 1, 2004.

[104] 17 CFR 270.0-10.

[105] This estimate, which is current as of December 2003, is derived from analyzing information from Form N-SAR and various databases

including Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[106] These records are: copies of the codes of ethics, records of violations of the codes of ethics, records of personal securities transactions and holdings reports, records of persons subject to reporting under the codes of ethics, records of decisions relating to approvals of investments in IPOs or limited offerings, and records of supervised person acknowledgments of the code of ethics. Advisers are generally required to retain these records for five years.

[107] 5 U.S.C. 603(c).

http://www.sec.gov/rules/final/ia-2256.htm

Home | Previous Page

Modified: 07/06/2004

July 20, 2004

INVESTMENT ADVISER ASSOCIATION

BEST PRACTICES FOR INVESTMENT ADVISER CODES OF ETHICS

On July 2, 2004, the Securities and Exchange Commission adopted a new rule and rule amendments under Section 204 of the Investment Advisers Act of 1940 that require all registered investment advisers to adopt codes of ethics. The codes of ethics must set forth standards of conduct expected of advisory personnel and address conflicts that arise from personal trading by advisory personnel. The rule and rule amendments are intended to promote compliance with fiduciary standards by advisers and their personnel. The SEC also adopted conforming amendments to rule 17j-1 under the Investment Company Act.

The IAA strongly supports the fundamental requirement that all investment advisers adopt and implement written codes of ethics. Since 1937, the IAA has endorsed standards and principles that have emphasized an investment adviser's fiduciary duty. The IAA's current standards state that investment advisers are fiduciaries and thereby have the responsibility to render professional, continuous, and unbiased investment advice. Fiduciaries owe their clients a duty of honesty, good faith, and fair dealing. As a fiduciary, an adviser must act at all times in the client's best interests and must avoid or disclose conflicts of interests. Codes of ethics emphasize and implement these fundamental principles within each firm.

In 1995, the IAA encouraged its member firms to adopt a Code of Ethics that would address, among other things, personal trading, gifts, the prohibition against the use of inside information, and other situations where there is a possibility for conflicts of interest. At that time, the IAA issued guidelines to assist its members in addressing the personal trading aspects of such codes. Guidelines on Personal Investing (February 15, 1995). We understand that many of our members have followed these guidelines in establishing a code of ethics and personal trading policies and procedures.

In light of recent events, including the SEC's new rule and ongoing investigation of abusive practices involving advisers to mutual funds, the IAA has concluded that our guidelines should be expanded and updated. The IAA has prepared this Best Practices for Investment Adviser Codes of Ethics ("Best Practices") based on an extensive review of the current codes of ethics and policies and procedures of many investment advisers, and numerous discussions with IAA members and investment management professionals. These Best Practices are intended to provide guidelines and suggest best practices for an adviser seeking to update, revise or construct its own code of ethics appropriate to the nature and size of its particular advisory business and the types of clients it serves. The Best Practices also address all of the provisions required by the SEC's new rule.

TABLE OF CONTENTS

INTRODUCTION

An investment adviser's code of ethics should set the tone for the conduct and professionalism of the adviser's employees, officers, and directors. Because the ethical culture of a firm is of critical importance and must be supported at the highest levels of the firm, a firm's code of ethics should be approved or endorsed by senior management. For fund advisers, the code must also be approved by boards of funds advised by the firm. In addition, the president or chief executive of an adviser may wish to append a cover letter to the code when circulated to employees to emphasize his or her views regarding the importance of ethical conduct.

A code of ethics should be designed to:

- Protect the firm's clients by deterring misconduct;
- Educate employees regarding the firm's expectations and the laws governing their conduct;
- Remind employees that they are in a position of trust and must act with complete propriety at all times;
- Protect the reputation of the firm;
- Guard against violation of the securities laws; and
- Establish procedures for employees to follow so that advisers may determine whether their employees are complying with the firm's ethical principles.

Because of the educational component of a code of ethics, firms should strive to draft their codes in plain English. The more readable a code is, the more likely it is that employees will be able to understand and comply with its precepts. In addition, the firm should provide training and readily available resources for its employees to assist them in understanding what conduct is or is not permissible.

It is vitally important that firms tailor their codes of ethics to the business, structure, clientele, and nature of their own firms. No single "off-the-shelf" set of provisions will be appropriate for every adviser. In addition, the restrictions set forth in the code should be reasonable and not create an unnecessary burden on employees.

A code of ethics should establish the firm's expectations for its personnel and set forth principles and standards for them to follow. Specific procedures related to these standards may be included in the code itself or in a compliance manual. Some firms strongly prefer a short, simple code focused on core conduct, while other advisers prefer very comprehensive codes including or cross-referencing a wide range of compliance policies and procedures. Each firm should assess its own structure and compliance system in determining whether to include various policies and procedures in the code or in its compliance manual or other documents. While advisers may structure their codes of ethics to best fit their organizations, an adviser that puts various required provisions of the code into multiple documents should ensure that all parts are integrated and

understandable so that it is clear to employees that these documents together constitute the firm's code of ethics.

We set forth below the SEC's required topics for an adviser's code of ethics, additional IAA- recommended best practices for a code and related policies and procedures, and discussion of other provisions that firms may wish to consider including in their codes where appropriate. The required topics we cover focus solely on the requirements under Investment Advisers Act rule 204A-1 and Investment Company Act rule 17j-1. These provisions are indicated by a (**Required**) notation. This document does not, and is not intended to, cover code of ethics requirements imposed by the Sarbanes-Oxley Act of 2002.

We recognize that there is enormous diversity within the investment advisory profession and that every firm has unique characteristics and practices. Accordingly, this document is not intended to set forth a "one-size-fits-all" set of provisions that all firms should implement. Instead, this document should be used as a set of guidelines that firms may consider in crafting codes of ethics that serve their needs and fit their particular circumstances.

PART 1. GENERAL PRINCIPLES

The IAA recommends that an adviser's code of ethics include a general statement of principles or the firm's philosophy regarding ethics. These principles should emphasize the adviser's overarching fiduciary duty to clients and the obligation of firm personnel to uphold that fundamental duty.

The general principles should at a minimum include:

1. The duty at all times to place the interests of clients first;

2. The requirement that all personal securities transactions be conducted in such a manner as to be consistent with the code of ethics and to avoid any actual or potential conflict of interest or any abuse of an employee's position of trust and responsibility;

3. The principle that investment adviser personnel should not take inappropriate advantage of their positions;

4. The fiduciary principle that information concerning the identity of security holdings and financial circumstances of clients is confidential; and

5. The principle that independence in the investment decision-making process is paramount.

In addition, some firms use the general principles to discuss the importance of the firm's reputation, as well as principles of honesty, integrity, and professionalism. We

recommend that firms also emphasize to all directors, officers, and employees that the general principles discussed in this section govern all conduct, whether or not the conduct also is covered by more specific standards and procedures set forth below.

Advisers may also wish to emphasize at the outset that failure to comply with the firm's code of ethics may result in disciplinary action, including termination of employment.

PART 2. SCOPE OF THE CODE

Understanding which compliance-related topics will be included in an adviser's code and which of the adviser's officers, directors, and employees will be covered by all or part of the code is essential to developing an appropriately structured code of ethics.

A. Topics Addressed in the Code

In drafting its code of ethics, an adviser needs to decide which topics should be included in the code and which will be covered by other policies or procedures included in the firm compliance manual/policies, employee handbook, or elsewhere. In general, broad principle-based concepts addressed to the firm's employees and emphasizing fiduciary duty are appropriate for the code. In addition, the code is required to encourage employees to comply with applicable federal securities laws, while the requirements for an adviser's compliance procedures focus on the firm's compliance with the Investment Advisers Act and regulations thereunder.

The vast majority of codes that we reviewed address securities-related conduct and focus principally on fiduciary duty, personal securities transactions, insider trading, gifts, and conflicts of interest. Some of the other provisions that a few firms included are: antitrust; anti-money laundering; compliance with copyright laws; corporate responsibility; drug free workplace; employment of former government employees; employment practices; financial reporting; health and safety in the workplace; illegal payments (Foreign Corrupt Practices Act); NASD regulations (for dual registrants); past and current litigation; press and media dealings; Sarbanes-Oxley code of ethics; sexual harassment; speaking engagements; and termination of employment. We understand that most firms, however, address these non-securities-related issues in their employee handbooks or in other policy and procedure compilations.

B. Persons Covered by the Code

An investment adviser must designate the categories or sub-categories of persons covered by an adviser's code or portions of its code. Rule 204A-1 requires the code to cover an adviser's "supervised persons." A subset of these supervised persons, "access persons," are required to comply with specific reporting requirements. (**Required**)

Supervised Persons include:

- Directors, officers, and partners of the adviser (or other persons occupying a similar status or performing similar functions);
- Employees of the adviser; and
- Any other person who provides advice on behalf of the adviser and is subject to the adviser's supervision and control.

An adviser may wish to specify additional categories of persons as supervised persons or persons otherwise subject to the code, including:

- Temporary workers;
- Consultants;
- Independent contractors;
- Certain employees of affiliates; or
- Particular persons designated by the chief compliance officer.

Similarly, an adviser, where appropriate, may also wish to clarify which persons or types of persons are *not* subject to the code.

Access Person includes any supervised person who:

- has access to nonpublic information regarding any clients' purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any fund the adviser or its control affiliates manage; or
- is involved in making securities recommendations to clients, or has access to such recommendations that are nonpublic.

If a firm's primary business is providing investment advice, all of the firm's directors, officers, and partners are presumed to be access persons.

Access Persons for Mutual Funds. A code of ethics for an adviser that manages a mutual fund must cover a slightly different universe of individuals, including:[1]

- Directors, officers, and general partners of the adviser; and
- "Advisory persons" – employees and certain control persons (and their employees) who make, participate in, or obtain information regarding fund securities transactions or whose functions relate to the making of recommendations with respect to fund transactions.
- Fund advisers may exempt from certain reporting provisions of the code fund directors who are not employees of the adviser and do not have access to confidential information regarding client securities transactions or recommendations.

[1] We have assumed for purposes of this code that the investment advisory firm is primarily in the business of providing investment advice. For fund advisers not primarily in the business of advising funds or advisory clients, "access persons" only include directors, officers, general partners, or advisory persons who make, participate in, or who obtain information regarding fund transactions or whose functions relate to the making of any recommendations with respect to a fund transaction.

Accordingly, fund advisers should determine which persons employed by control affiliates may have access to fund information and either designate those employees as access persons or develop policies that prevent such control affiliate employees from obtaining confidential fund information.

Some firms choose to treat all employees as access persons, particularly where the nature or philosophy of the firm tends to expose a large range of employees to client information. Firms may also consider extending compliance procedures to some group of employees broader than access persons, or to all employees.

Family Members. For purposes of personal securities reporting requirements, an adviser should ensure that terms such as "employee," "account," "supervised person," and "access person" are defined to also include the person's immediate family (including any relative by blood or marriage living in the employee's household), and any account in which he or she has a direct or indirect beneficial interest (such as a trust). Some firms also include any other individuals living in the employee's household. Advisers may wish to consider whether the scope of code provisions other than those related to personal securities transactions should extend beyond employees to their family members.

Investment Personnel. These Best Practices include a few provisions that would apply to a subset of access persons (*e.g.*, IPOs, private placements). Accordingly, we recommend that advisers define an additional category of personnel in their codes who make investment decisions for clients (*i.e.*, portfolio managers), who provide information or advice to portfolio managers, or who help execute and/or implement the portfolio manager's decision. Such "investment personnel" could include, for example, portfolio managers, portfolio assistants, securities analysts, and traders. This definition is needed only if the adviser chooses not to apply these more restrictive provisions to all access persons.

C. Securities Covered by the Code

The IAA recommends that firms include a definition of "covered securities" in their codes. The definition clarifies for employees what types of securities are covered by various provisions of the code. For example, the definition may read:

Covered Security means any stock, bond, future, investment contract or any other instrument that is considered a "security" under the Investment Advisers Act. The term "covered security" is very broad and includes items you might not ordinarily think of as "securities," such as:

- Options on securities, on indexes, and on currencies;
- All kinds of limited partnerships;
- Foreign unit trusts and foreign mutual funds; and
- Private investment funds, hedge funds, and investment clubs.

Covered Security does not include[2]:

- Direct obligations of the U.S. government (e.g., treasury securities);
- Bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt obligations, including repurchase agreements;
- Shares issued by money market funds;
- Shares of open-end mutual funds that are not advised or sub-advised by the firm (or certain affiliates, where applicable); and
- Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are funds advised or sub-advised by the firm (or certain affiliates, where applicable).

Some firms may not want to use this definition of "covered security" with respect to every provision in the code because it includes within its scope funds advised or sub-advised by the firm. For example, the new rule requires that access persons submit reports with respect to transactions in mutual funds advised or sub-advised by the firm, but a firm that voluntarily requires pre-clearance of transactions may decide not to include shares of mutual funds it advises or sub-advises in such procedures. In that case, the firm should include two separate definitional terms in this section (*e.g.*, "covered securities," which would exclude all open-end mutual funds, and "reportable securities" or "reportable funds" for use in sections applicable to transactions in funds advised or sub-advised by the firm). Firms that advise many funds, or whose employees will have to report regarding funds advised by affiliates, may wish to attach a list of such funds to assist employees in understanding their obligations.

In addition, advisers often include in their codes a broader glossary of important terms used in the code, such as "accounts," "beneficial interest," "covered funds," "access persons," "supervised persons," "investment persons," and "investment control." Advisers that include such a broader glossary should consider placing it at the back of the code so that employees are not immediately confronted by a daunting list of legalistic terms. Finally, some firms include a provision in their code regarding application of the various personal securities transaction rules to the firm's own retirement plan, subject to any ERISA considerations.

PART 3. STANDARDS OF BUSINESS CONDUCT

The new rule 204A-1 requires codes to include standards of business conduct that the firm requires of its supervised persons, which must reflect the firm's and its supervised persons' fiduciary obligations. (**Required**) This section sets forth potential categories of topics that could be included in an adviser's business conduct standards. These categories combine legal requirements with suggested practices that may not be necessary or appropriate for all advisory firms. Firms should tailor any policies to their own unique characteristics and clientele.

---

[2] These exceptions from the term "covered security" are expressly excluded from the reporting requirements of new rule 204A-1. These exceptions are also permitted by Investment Company Act rule 17j-1.

A. **Compliance with Laws and Regulations.** The code should provide that supervised persons must comply with applicable federal securities laws. **(Required)**

1. As part of this requirement, the code should specify that supervised persons are not permitted, in connection with the purchase or sale, directly or indirectly, of a security held or to be acquired by a client:

   a. To defraud such client in any manner;

   b. To mislead such client, including by making a statement that omits material facts;

   c. To engage in any act, practice or course of conduct which operates or would operate as a fraud or deceit upon such client;

   d. To engage in any manipulative practice with respect to such client; or

   e. To engage in any manipulative practice with respect to securities, including price manipulation.

2. Advisers should consider whether to specifically discuss other federal securities laws that may be applicable to their supervised persons.

   a. *Note*. Regulation S-P (privacy requirements) and anti-money laundering requirements imposed on mutual funds and proposed for investment advisers are considered to be federal securities laws.

B. **Conflicts of Interest.** The code should provide that, as a fiduciary, the firm has an affirmative duty of care, loyalty, honesty, and good faith to act in the best interests of its clients. Compliance with this duty can be achieved by trying to avoid conflicts of interest and by fully disclosing all material facts concerning any conflict that does arise with respect to any client. In addition, firms may wish to impose a higher standard by providing that individuals subject to the code must try to avoid situations that have even the *appearance* of conflict or impropriety.

1. *Conflicts Among Client Interests*. Conflicts of interest may arise where the firm or its supervised persons have reason to favor the interests of one client over another client (*e.g.*, larger accounts over smaller accounts, accounts compensated by performance fees over accounts not so compensated, accounts in which employees have made material personal investments, accounts of close friends or relatives of supervised persons). The IAA recommends that the code specifically prohibit inappropriate favoritism of one client over another client that would constitute a breach of fiduciary duty. Advisers should include in the code or elsewhere procedures designed to address such conflicts.

2. *Competing with Client Trades*. The IAA recommends that the code prohibit access persons from using knowledge about pending or currently considered securities transactions for clients to profit personally, directly or indirectly, as a result of such transactions, including by purchasing or selling such securities. Conflicts raised by personal securities transactions also are addressed more specifically in section D below.

3. *Other Potential Conflicts Provisions*. Advisers may wish to consider the following additional types of conflicts provisions:

   a. *Disclosure of personal interest.* Many advisers prohibit investment personnel from recommending, implementing or considering any securities transaction for a client without having disclosed any material beneficial ownership, business or personal relationship, or other material interest in the issuer or its affiliates, to an appropriate designated person (*e.g.*, the chief investment officer or, with respect to the chief investment officer's interests, another designated senior officer). If such designated person deems the disclosed interest to present a material conflict, the investment personnel may not participate in any decision-making process regarding the securities of that issuer.

      1) *Note*. This provision would apply in addition to the firm's quarterly and annual personal securities reporting requirements.

      2) *Research Analysts*. If a research analyst has a material interest in an issuer, the firm may wish to assign a different analyst to cover the issuer.

   b. *Referrals/Brokerage*. Although already addressed in separate policies and procedures, advisers may wish to include in the code itself a provision requiring supervised persons to act in the best interests of the firm's clients regarding execution and other costs paid by clients for brokerage services. As part of this principle, the code would remind supervised persons to strictly adhere to the firm's policies and procedures regarding brokerage (including allocation, best execution, soft dollars, and directed brokerage). Such policies and procedures generally are too detailed to be included in the code, but may be cross-referenced.

   c. *Vendors and Suppliers.* Some advisers include a provision in their codes requiring supervised persons to disclose any personal investments or other interests in vendors or suppliers with respect to which the person negotiates or makes decisions on behalf of the firm. Firms with this type of provision in their code generally prohibit supervised persons with such interests from negotiating or making decisions regarding the firm's business with those companies.

d. *No Transactions with Clients.* A few advisers include a provision specifically stating that supervised persons are not permitted to knowingly sell to or purchase from a client any security or other property, except securities issued by the client.

C. **Insider Trading.** Codes of ethics should include a provision prohibiting supervised persons from trading, either personally or on behalf of others, while in possession of material, nonpublic information. The provision should also prohibit personnel from communicating material nonpublic information to others in violation of the law. The code should either include the firm's insider trading policies and procedures or cross-reference these policies and procedures.

1. *Penalties.* Advisers that have separate insider trading policies and procedures may wish to include a discussion of potential insider trading penalties in the code itself, including civil injunctions, permanent bars from employment in the securities industry, civil penalties up to three times the profits made or losses avoided, criminal fines, and jail sentences. Advisers may also wish to emphasize that although access persons are most likely to come in contact with material nonpublic information, the prohibition on insider trading and potential sanctions apply to all employees, officers, and directors.

2. *Special Procedures.* Advisers must tailor their insider trading policies to the circumstances of their firm, their employees, and their clients. For example, a firm that permits employees to serve on the boards of public companies or on creditors committees may require special procedures. Similarly, firms with clients that are publicly traded companies or clients who are insiders at public companies may need additional cautionary provisions in their codes. Advisers should consider information provided not only by insiders, but also by paid consultants and other third parties in drafting their policies and procedures.

3. *Material Nonpublic Information.* Advisers should note the SEC's position that the term "material nonpublic information" relates not only to issuers but also to the adviser's securities recommendations and client securities holdings and transactions.

D. **Personal Securities Transactions.** Codes of ethics should include a provision requiring all access persons strictly to comply with the firm's policies and procedures regarding personal securities transactions. Some firms maintain a separate personal securities transactions policy. Others include the policy within the code of ethics. The IAA recommends the following provisions for a firm's personal securities transactions policy:

1. *Initial Public Offerings – Prohibition.* The IAA recommends that codes of ethics prohibit *investment personnel* from acquiring any securities in an initial public offering, in order to preclude any possibility of their profiting improperly from their positions with an adviser.

   a. *Note.* The SEC's rule requires pre-clearance of an *access person's* participation in IPOs. **(Required)** For simplicity, a firm may wish to prohibit all access persons from participating in IPOs, rather than requiring pre-clearance for access persons who are not also investment personnel.

   b. *Sole Proprietors.* The SEC rule exempts firms with only one access person from the IPO pre-clearance requirement.

2. *Limited or Private Offerings – Pre-Clearance.* The rule mandates that codes of ethics require express prior approval of any acquisition of securities by access persons in a limited offering (*e.g.*, private placement). **(Required)** The IAA recommends that this prior approval take into account, among other factors, whether the investment opportunity should be reserved for clients, and whether the opportunity is being offered to an individual by virtue of his or her position with the adviser.

   a. The IAA further recommends that investment personnel who have been authorized to acquire securities in a private placement should be required to *disclose* that investment when they play a part in any client's subsequent consideration of an investment in the issuer; and

   b. In such circumstances, the decision to purchase securities of the issuer for the client should be made either by another employee or, at a minimum, should be subject to an independent review by investment personnel with no personal interest in the issuer.

   c. The new rule exempts firms with only one access person from the pre-clearance requirement for limited offerings.

3. *Blackout Periods.* The IAA recommends that codes of ethics prohibit any access person from executing a securities transaction on a day during which any client has a pending "buy" or "sell" order in the same (or a related) security until that order is executed or withdrawn. The IAA recommends that advisers consider an additional prohibition on purchase or sale by access persons or investment personnel of a security within a so-called "blackout" period, *i.e.*, a prescribed number of calendar days before and after a client trades in that security.

   a. The IAA recognizes that policies on "blackout" periods, the length of such periods, and the persons or categories of persons to whom they apply will vary to meet the particular nature and practices of individual firms.

b. Some firms provide exemptions from the blackout period for certain types of transactions that do not present the potential for conflicts of interest, including those set forth in Part 4, section A.3 below.

c. Some firms have a separate blackout period that applies when an analyst changes his or her recommendation.

4. *Short-Term Trading.* The IAA recommends that advisers restrict short-term trading by investment personnel. Any profits realized on prohibited short-term trades should be required to be disgorged.

a. *Duration.* The duration of a ban on short-term trading is a policy matter for each firm. Common durations for non-fund advisers are 30 days and 60 days.

b. *Persons Covered.* Depending on the size and nature of the firm, the adviser may wish to consider extending this prohibition to access persons or all supervised persons.

c. *Securities Covered.* Some advisers prohibit short-term trading only with respect to securities held in client accounts.

d. *Fund Advisers.* The IAA recommends that investment advisory firms that advise or sub-advise mutual funds either (a) define the securities transactions covered by the code to include transactions in mutual funds advised by the adviser or certain affiliates or sub-advised by the adviser; (b) expressly prohibit access persons from engaging in short-term trading in mutual funds advised by the firm or its affiliates or sub-advised by the firm; or (c) require pre-clearance of access persons' redemptions or exchanges of the adviser's funds or sub-advised funds within 30 days of purchase.

1) *Note.* This type of provision is recommended to deter and/or monitor for any market timing by fund adviser employees, in addition to the reporting requirements set forth in Part 4.A below.

5. *Miscellaneous Restrictions.* Advisers may wish to consider some of the following additional restrictions:

a. *Margin Accounts.* Some advisers discourage or prohibit their personnel from purchasing securities on margin.

b. *Short Sales.* Some advisers generally prohibit their personnel from selling any security short, except for short sales "against the box." Alternately, some advisers prohibit short sales in any security that is owned by any client of the firm.

c. *Options and Futures.* Options and futures are covered securities subject to all sections of the code. Some advisers impose additional restrictions on

transactions involving puts, calls, straddles, options, or futures either generally or with respect to options or futures related to securities held by clients of the firm.

d. *Limit Orders.* Some firms prohibit access persons from placing a "good until cancelled" order or any limit order other than a "same-day" limit order.

e. *Significant Holdings.* A few firms prohibit their investment personnel from holding more than a specified percentage of the outstanding securities of one company without (a) disclosure; or (b) approval by the chief compliance officer or other designated person.

f. *Restricted List.* Some firms maintain a list of securities that the firm is analyzing or considering for client transactions, and prohibit their access persons from personal trading in those securities.

g. *Frequent Trading.* In addition to prohibiting short-term trading in the same security, some firms explicitly discourage frequent trading in general because it may be a potential distraction from servicing clients.

E. **Gifts and Entertainment.** The IAA recommends that codes of ethics contain the following types of provisions regarding gifts and entertainment.

1. *General Statement.* A conflict of interest occurs when the personal interests of employees interfere or could potentially interfere with their responsibilities to the firm and its clients. *The overriding principle is that supervised persons should not accept inappropriate gifts, favors, entertainment, special accommodations, or other things of material value that could influence their decision-making or make them feel beholden to a person or firm.* Similarly, supervised persons should not offer gifts, favors, entertainment or other things of value that could be viewed as overly generous or aimed at influencing decision-making or making a client feel beholden to the firm or the supervised person.

   a. *Note.* This general principle applies in addition to the more specific guidelines set forth below.

2. *Gifts.* No supervised person may receive any gift, service, or other thing of more than *de minimis* value from any person or entity that does business with or on behalf of the adviser. No supervised person may give or offer any gift of more than *de minimis* value to existing clients, prospective clients, or any entity that does business with or on behalf of the adviser without pre-approval by the chief compliance officer.

3. *Cash.* No supervised person may give or accept cash gifts or cash equivalents to or from a client, prospective client, or any entity that does business with or on behalf of the adviser.

4. *Entertainment.* No supervised person may provide or accept extravagant or excessive entertainment to or from a client, prospective client, or any person or entity that does or seeks to do business with or on behalf of the adviser. Supervised persons may provide or accept a business entertainment event, such as dinner or a sporting event, of reasonable value, if the person or entity providing the entertainment is present.

5. *Additional Provisions.* Some firms include provisions that provide additional specificity regarding gifts and entertainment. Firms may wish to consider including some of the following types of provisions in their code where appropriate:

   a. *Specific De Minimis.* Advisers may wish to delineate a *de minimis* value for gifts or entertainment in their codes of ethics. The specific amount may vary depending on the nature and location of the firm and its clients. Firms that are dual registrants sometimes use a $100 gift *de minimis* for all employees based on NASD rules.

   b. *Pre-Clearance.* Some firms require pre-clearance of business entertainment events exceeding a specified amount in value, or of a certain type (*e.g.*, offer of travel expenses or hotel accommodations), or to certain categories of persons (*e.g.*, government officials).

   c. *Reporting.* Some firms require quarterly reporting of gifts and entertainment received by certain categories of personnel. Some firms also keep logs of gifts and entertainment provided and received.

   d. *Solicited Gifts.* Some firms expressly prohibit employees from soliciting for themselves or the firm gifts or anything of value. Some policies express this concept in terms of a prohibition on a supervised person's using his or her position with the firm to obtain anything of value from a client, supplier, person to whom the employee refers business, or any other entity with which the firm does business.

   e. *Appropriate Circumstances.* Some firms specifically list acceptable types of gifts and entertainment and/or specify that receipt of entertainment is acceptable if the expenses would have been paid as a firm business expense. Some firms clarify that discounts and rebates on merchandise or services are appropriate only where they do not exceed those available for other customers.

   f. *Referrals.* Some policies include a provision that supervised persons may not make referrals to clients (*e.g.*, of accountants, attorneys, or the like) if the supervised person expects to benefit in any way.

   g. *Government Officials.* Firms that engage in certain types of business, such as managing state or municipal pension funds, may want to include special

provisions regarding government officials. For example, the code may make employees aware that certain laws or rules in various jurisdictions may prohibit or limit gifts or entertainment extended to public officials. *See also* subsection 5.b above.

F. **Political and Charitable Contributions.** The IAA recommends that any investment adviser that provides investment supervisory services to government entities, or that seeks to provide such services, prohibit employees from making political contributions for the purpose of obtaining or retaining advisory contracts with government entities. In addition, an adviser should prohibit its supervised persons from considering the adviser's current or anticipated business relationships as a factor in soliciting political or charitable donations. For more information, *see* IAA's *Best Practice Pay-to-Play Guidelines for Adviser Codes of Ethics* (May 15, 2000).

G. **Confidentiality.** All confidentiality provisions should start with the basic fiduciary premise that information concerning the identity of security holdings and financial circumstances of clients is confidential.

1. *Firm Duties.* The IAA recommends that codes include a provision stating that the adviser must keep all information about clients (including former clients) in strict confidence, including the client's identity (unless the client consents), the client's financial circumstances, the client's security holdings, and advice furnished to the client by the firm.

2. *Supervised Persons' Duties.* As part of or in addition to insider trading procedures, an adviser should prohibit supervised persons from disclosing to persons outside the firm any material nonpublic information about any client, the securities investments made by the firm on behalf of a client, information about contemplated securities transactions, or information regarding the firm's trading strategies, except as required to effectuate securities transactions on behalf of a client or for other legitimate business purposes.

   a. *Disclosure of Holdings.* Some firms include a provision in their code that governs the timing of the firm's disclosure of fund or model portfolio holdings to clients, consultants, or prospective clients upon request. Such a provision is designed to ensure that some clients are not able to receive such information earlier than other clients and to ensure that the information is no longer material in the sense of affecting the firm's trading strategies. A firm may also require consultants to abide by a confidentiality agreement and stipulation not to trade on the information provided.

3. *Internal Walls.* Depending on the size and nature of the firm, a firm may wish to prohibit access persons from disclosing nonpublic information concerning clients or securities transactions to non-access persons within the firm. Similarly, a firm with affiliates may include a provision prohibiting supervised persons from

sharing information with persons employed by affiliated entities, except for legitimate business purposes.

4. *Physical Security.* A few firms discuss the physical security of nonpublic information in this section. For example, a policy might state that files containing material nonpublic information should be sealed and access to computer files containing such information should be restricted.

5. *Regulation S-P.* A few firms also expressly cross-reference their Regulation S-P privacy policy under the confidentiality section. Such a provision would mandate that supervised persons comply with the firm's privacy policy, which the firm could attach to or reference in the code.

    a. *Note.* Regulation S-P covers only a subset of an adviser's confidentiality standards. Regulation S-P applies only to natural persons and only to personal information. An adviser's fiduciary duty to keep client information confidential extends to *all* of the firm's clients and information.

H. **Service on a Board of Directors.** The IAA recommends that codes of ethics set out the circumstances under which investment personnel may serve on boards of directors of publicly traded companies. Because of the high potential for conflicts of interest and insider trading problems, such situations should be carefully scrutinized and subject to prior approval. In the relatively small number of instances in which board service is authorized, investment personnel serving as directors normally should be isolated, through information barriers or other procedures, from those making investment decisions regarding the issuer.

1. *Ban.* Some advisers state more strongly that they prohibit supervised persons from serving as directors of public companies and state that exceptions will be made only when in the best interests of the firm and its clients.

2. *Private Company Going Public.* Some firms include a provision that a director of a private company may be required to resign, either immediately or at the end of the current term, if the company goes public during his or her term as director.

I. **Other Outside Activities.** In addition to addressing service on boards of publicly traded companies, many firms have provisions addressing the following issues:

1. *General.* The firm may discourage supervised persons from engaging in outside business or investment activities that may interfere with their duties with the firm. Some firms prohibit supervised persons from maintaining any outside business affiliations, including directorships of private companies, consulting engagements, or public/charitable positions, without the prior written approval of the appropriate officer at the firm.

2. *Fiduciary Appointments.* Firms often require that supervised persons obtain firm approval before accepting an executorship, trusteeship, or power of attorney, other than with respect to a family member. With respect to fiduciary appointments on behalf of family members, some firms require disclosure at the inception of the relationship.

3. *Creditors Committees.* Some firms prohibit a supervised person from serving on a creditors committee except as approved by the firm as part of the person's employment duties.

4. *Disclosure.* Regardless of whether an activity is specifically addressed in the code, supervised persons should disclose any personal interest that might present a conflict of interest or harm the reputation of the firm.

J. **Marketing and Promotional Activities.** The IAA recommends that the code include a provision reminding supervised persons that all oral and written statements, including those made to clients, prospective clients, their representatives, or the media, must be professional, accurate, balanced, and not misleading in any way. Firms may wish to cross-reference the advertising section of their compliance manuals. Many advisers also require pre-clearance for promotional materials, either in their codes or in separate compliance policies and procedures.

PART 4. COMPLIANCE PROCEDURES

The IAA suggests the following compliance procedures to implement firms' codes of ethics. Some firms may include these provisions in the code itself, while others may wish to include them in a separate compliance policies and procedures. Firms may wish to consider extending these procedures to some group of employees broader than access persons, or to all employees.

A. **Personal Securities Transaction Procedures and Reporting.**

1. *Pre-Clearance Procedures.* The IAA recommends that access persons be required to obtain pre-clearance for transactions in covered securities (as defined by the firm). The pre-clearance requirements and associated procedures should be reasonably designed to identify any prohibition or limitation applicable to a proposed investment. Pre-clearance procedures typically include:

   a. A standard form to be submitted by the requesting access persons, containing all relevant information about the proposed transaction;

   b. The time that pre-clearance expires (*e.g.*, same business day, 48 hours, etc.). Note that advisers with non-U.S. offices may find that pre-clearance needs to be extended to accommodate the different hours of non-U.S. markets;

c. Designation of chief compliance officer or other person to authorize requested transactions;

d. Designation of individual responsible for authorizing transactions of the chief compliance officer or other person that authorizes transactions; and

e. Documentation of the authorization, including time and signature of authorizing individual.

Procedures should include monitoring of personal investment activity of access persons and others who have been granted pre-clearance. For example, post-trade reports or duplicate confirmations should be checked against the log or file of pre-clearance approvals.

2. *Reporting Requirements.*

a. *Holdings Reports.* The code must require access persons to submit to the chief compliance officer (or other person designated in the code) a report of all holdings in covered/reportable securities within 10 days of becoming an access person and thereafter on an annual basis. (**Required**) The holdings report must include: (i) the title and exchange ticker symbol or CUSIP number, type of security, number of shares and principal amount (if applicable) of each reportable security in which the access person has any direct or indirect beneficial ownership; (ii) the name of any broker, dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and (iii) the date the report is submitted. (**Required**)

1) *Note.* Most firms supply their access persons with initial and annual holdings report forms indicating the information required, in lieu of specifying the content of the reports in the code itself. These forms often include certifications as to the completeness and accuracy of the information provided.

2) *Current information.* The information supplied must be current as of a date no more than 45 days before the annual report is submitted. For new access persons, the information must be current as of a date no more than 45 days before the person became an access person.

3) *Account identifier.* In addition to the required items listed above, some firms require their access persons to include specific account numbers or identifiers in their holdings reports.

b. *Quarterly Transaction Reports.* The code must require access persons to submit to the chief compliance officer (or other person designated in the code) transaction reports no later than 30 days after the end of each calendar quarter covering all transactions in covered/reportable securities during the quarter.

(Required) The transaction reports must include information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership. The reports must include: (i) the date of the transaction, the title and exchange ticker symbol or CUSIP number, the interest rate and maturity date (if applicable), the number of shares and the principal amount (if applicable) of each reportable security involved; (ii) the nature of the transaction (*e.g.*, purchase, sale); (iii) the price of the security at which the transaction was effected; (iv) the name of the broker, dealer, or bank with or through which the transaction was effected; and (v) the date the report is submitted. **(Required)**

1) *Note*. Again, most firms provide access persons with quarterly transaction report forms in lieu of listing the required content of the reports in the code. Some firms require this information on a monthly basis.

c. *Quarterly Brokerage Account Reports.* Fund advisers must include in their codes a provision requiring access persons to disclose the following information about any account opened during the quarter containing securities held for the direct or indirect benefit of the access person: (i) the name of the broker, dealer or bank with whom the access person established the account; (ii) the date the account was established; and (iii) the date the report is submitted. **(Required for fund advisers)**.

1) *Note*. The IAA recommends that non-fund advisers require access persons to disclose all securities accounts to the chief compliance officer or other designated person.

d. *Confidentiality of Reports.* Some firms include a provision assuring access persons that their transactions and holdings reports will be maintained in confidence, except to the extent necessary to implement and enforce the provisions of the code or to comply with requests for information from government agencies.

3. *Exempt Transactions*

a. *Reporting Exemptions.* Under the rule, an adviser's code need not require an access person to submit:

1) Any report with respect to securities held in accounts over which the access person has no direct or indirect influence or control;

a) *Note*. With respect to access persons who have accounts managed by investment advisers on a discretionary basis, firms may wish to require reporting (but not pre-clearance) for monitoring purposes.

2) A transaction report with respect to transactions effected pursuant to an automatic investment plan;

a) *Note*. This exemption includes dividend reinvestment plans.

3) A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that the firm holds in its records so long as the firm receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter; and

4) Any transaction or holding report if the firm has only one access person, so long as the firm maintains records of the information otherwise required to be reported under the rule.

b. *Pre-Clearance Exemptions.* Firms that require pre-clearance of access persons' personal securities transactions include some or all of the following types of exemptions from pre-clearance (but not from reporting) requirements:

1) Purchases or sales over which an access person has no direct or indirect influence or control (the corollary of (a)(i) above);

2) Purchases or sales pursuant to an automatic investment plan (the corollary of (a)(ii) above);

3) Purchases effected upon exercise of rights issued by an issuer *pro rata* to all holders of a class of its securities, to the extent such rights were acquired from such issuers, and sales of such rights so acquired;

4) Acquisition of securities through stock dividends, dividend reinvestments, stock splits, reverse stock splits, mergers, consolidations, spin-offs, and other similar corporate reorganizations or distributions generally applicable to all holders of the same class of securities;

5) Open end investment company shares *other than* shares of investment companies advised by the firm or its affiliates or sub-advised by the firm;

6) Certain closed-end index funds;

7) Unit investment trusts;

8) Exchange traded funds that are based on a broad-based securities index;

9) Futures and options on currencies or an a broad-based securities index;

10) Transactions in certain types of debt securities (*e.g.*, municipal bonds) where the firm is an equity-only adviser or other similar circumstances where conflicts of interest would not arise;

11) Other non-volitional events, such as assignment of options or exercise of an option at expiration; or

12) *De minimis* transactions in large-cap securities.

a) The transaction parameters set forth by firms for these exemptions are varied. Most firms specify a market capitalization for issuers in conjunction with a specified limit on the number of shares involved in the transaction (*e.g.*, no more than 1,000 shares in a issuer with a market capitalization of $10 billion or greater, in a one-month period).

b) The *de minimis* parameters will vary depending on the size of the firm, the nature of its business, its investment strategy, and whether the size of client transactions involves market-moving potential.

c. *Other exemptions.* Many advisers use the pre-clearance exemptions listed above for other personal trading restrictions such as blackout periods and short-term trading restrictions. Some advisers that sponsor unregistered funds and that allow employees and principals to invest in those funds exempt trades in those unregistered funds from pre-clearance and other personal trading restrictions.

4. *Duplicate Brokerage Confirmations and Statements.* The IAA recommends that advisers' codes require access persons to direct their brokers to provide to the chief compliance officer or other designated compliance official, on a timely basis, duplicate copies of confirmations of all personal securities transactions and copies of periodic statements for all securities accounts. Firms may wish to permit their access persons to use such duplicate brokerage confirmations and account statements in lieu of submitting their quarterly transaction reports, provided that all of the required information is contained in those confirmations and statements.

5. *Designated Brokerage Accounts.* Some advisers, particularly larger firms, require their employees to maintain their personal brokerage and trading accounts with a firm-designated broker or limit the number of brokers employees may use. Other firms require employees to obtain permission or provide prior notice before opening a new account. Some fund advisers, where feasible, may wish to prohibit their access persons from buying shares of mutual funds advised or subadvised by

the adviser through omnibus accounts and requiring access persons to buy such shares directly from the fund's transfer agent.

6. *Monitoring of Personal Securities Transactions.* Advisers are required to review personal securities transactions and holdings reports periodically. **(Required)** The IAA recommends the following procedures to implement this requirement:

   a) The firm should designate an individual or position that is responsible for reviewing and monitoring personal securities transactions and trading patterns of access persons ("Reviewer").

   b) The firm should designate an individual or position that is responsible for reviewing and monitoring the personal securities transactions of the Reviewer and for taking on the responsibilities of the Reviewer in the Reviewer's absence.

   c) Advisers should consider including a written procedure for the Reviewer to follow should the Reviewer become aware of potential violations of the code.

   d) Advisers should consider excluding specific monitoring and reviewing procedures from the code itself. Overly specific detail regarding these procedures may provide an opportunity for wrongdoers to evade detection. However, the SEC has suggested that review of personal securities holding and transaction reports include:

      1) An assessment of whether the access person followed any required internal procedures, such as pre-clearance;

      2) Comparison of personal trading to any restricted lists;

      3) An assessment of whether the access person is trading for his or her own account in the same securities he or she is trading for clients, and if so, whether the clients are receiving terms as favorable as the access person takes for him or herself;

      4) Periodically analyzing the access person's trading for patterns that may indicate abuse, including market timing; and

      5) An investigation of any substantial disparities between the percentage of trades that are profitable when the access person trades for his or her own account and the percentage that are profitable when he or she places trades for clients.

B. **Pre-Clearance and Reporting of Gifts and Outside Activities.** Firms that choose to include pre-clearance procedures for gifts, entertainment, donations, outside directorships, or other activities should include procedures similar to those suggested

for personal securities transactions (*e.g.*, designation of authorizing individual/committee, documentation, and so forth). Similarly, firms that choose to require reporting of gifts, entertainment, and donations should provide forms or specifications for their employees, as well as guidance on frequency of reporting. Such firms should also set forth procedures for review and analysis of the reports received.

C. **Certification of Compliance**

1. *Initial Certification.* The firm is required to provide all supervised persons with a copy of the code. The IAA recommends that advisers require all supervised persons to certify in writing that they have: (a) received a copy of the code; (b) read and understand all provisions of the code; and (c) agreed to comply with the terms of the code. **(Acknowledgement of receipt of code required)**

2. *Acknowledgement of Amendments.* The advisory firm must provide supervised persons with any amendments to the code and supervised persons should submit a written acknowledgement that they have received, read, and understood the amendments to the code. **(Acknowledgement of receipt of amendments required)**

   a) *Note*. The SEC rule requires that supervised persons receive any amendments to the code. Accordingly, to avoid inundating employees, firms may wish to reserve technical amendments to include in the annual process or to include with any material amendments. In addition, firms may wish to use titles or positions instead of specific names in the code.

   b) *Attention to changes*. Rather than simply distribute the amended code, the adviser should bring important changes to the attention of employees.

3. *Annual Certification.* The IAA recommends that all supervised persons annually certify that they have read, understood, and complied with the code of ethics. In addition, firms may wish more specifically to require the certification to include a representation that the supervised person has made all of the reports required by the code and has not engaged in any prohibited conduct. Conversely, if the employee is unable to make such a representation, the firm should require the employee to self-report any violations.

   a) *Note*. As part of the annual code of ethics certification, a few firms also require supervised persons to certify annually that they are not subject to any of the disciplinary events listed in Item 11 of Form ADV, Part 1.

PART 5. RECORDKEEPING

Advisers may wish to include recordkeeping provisions relevant to the code in the code itself as well as in any separate recordkeeping policies and procedures in the firm's

compliance manual. If so, the code's recordkeeping provision should state that the firm will maintain the following records in a readily accessible place: (Required records)

1. A copy of each code that has been in effect at any time during the past five years;

2. A record of any violation of the code and any action taken as a result of such violation for five years from the end of the fiscal year in which the violation occurred;

3. A record of all written acknowledgements of receipt of the code and amendments for each person who is currently, or within the past five years was, a supervised person;

    a) These records must be kept for five years after the individual ceases to be a supervised person of the firm.

4. Holdings and transactions reports made pursuant to the code, including any brokerage confirmation and account statements made in lieu of these reports;

5. A list of the names of persons who are currently, or within the past five years were, access persons;

    a) Firms may wish to consider maintaining a list of investment personnel as well.

6. A record of any decision and supporting reasons for approving the acquisition of securities by access persons in limited offerings for at least five years after the end of the fiscal year in which approval was granted.

    a. *Note*. Firms that require pre-approval of access persons' investments in IPOs rather than prohibiting such investments would also be required to maintain records of such approvals.

    b. *Other approvals*. The IAA recommends that firms consider maintaining records of any decisions that grant employees or access persons a waiver from or exception to the code.

Fund advisers must also maintain:

1. A record of persons responsible for reviewing access persons' reports currently or during the last five years; and

2. A copy of reports provided to the fund's board of directors regarding the code.

PART 6. FORM ADV DISCLOSURE

The SEC's new rule requires advisers to include on Schedule F of Form ADV, Part II a description of the firm's code and to state that the firm will provide a copy of the code to any client or prospective client upon request. **(Required)** Advisers should take care to review and update the firm's Part II disclosure in connection with making amendments to the code.

PART 7. ADMINISTRATION AND ENFORCEMENT OF THE CODE

A. **Training and Education.** Advisers should consider designating the individual or position responsible for training and educating supervised persons regarding the code. Advisers should also consider stating in the code that training will occur periodically and that all supervised persons are required to attend any training sessions or read any applicable materials.

B. **Annual Review.** The code should require the chief compliance officer to review at least annually the adequacy of the code and the effectiveness of its implementation.

   1. *Note*. Because the code of ethics is part of a firm's overall compliance program, this review is required by Investment Advisers Act rule 206(4)-7 (the compliance program rule). Fund advisers should also coordinate this review with the compliance program review required by Investment Company Act rule 38a-1.

C. **Board Approval (Fund Advisers).** Fund advisers are required to have their codes approved by the board of directors of any mutual funds they advise or sub-advise. Any material amendments to the code must also be approved by the board. **(Required by Investment Company Act rule 17j-1)**

   1. *Note*. Fund advisers may wish to coordinate board approval of their codes with the compliance program approval required by Investment Company Act rule 38a-1.

D. **Report to Board (Fund Advisers).** Fund advisers are required to provide an annual written report to the board of the directors of the funds they advise or sub-advise that describes any issues arising under the code since the last report, including information about material violations of the code and sanctions imposed in response to such violations. The report must include discussion of whether any waivers that might be considered important by the board were granted during the period. The report must also certify that the adviser has adopted procedures reasonably necessary to prevent access persons from violating the code. **(Required by Investment Company Act rule 17j-1)**

   1. *Note*. Fund advisers may wish to coordinate this report with the annual compliance program report required by Investment Company Act rule 38a-1.

E. **Report to Senior Management (All Advisers).** Depending on the size and structure of the firm, an adviser should consider requiring the chief compliance officer to report to senior management regarding his or her annual review of the code and to bring material violations to the attention of senior management.

1. *Note.* If the chief compliance officer is a member of senior management, this provision may be less appropriate.

F. **Reporting Violations.** The code must require all supervised persons to report violations of the firm's code of ethics promptly to the chief compliance officer or other appropriate personnel designated in the code (provided the chief compliance officer also receives reports of all violations). **(Required)**

1. *Confidentiality.* Advisers may wish to state that such reports will be treated confidentially to the extent permitted by law and investigated promptly and appropriately. Similarly, advisers may permit reports to be submitted anonymously.

2. *Alternate Designee.* Advisers should consider designating an alternate person to whom employees may report violations in case the chief compliance officer or other primary designee is involved in the violation or is unreachable.

3. *Types of Reporting.* Advisers may also wish to illustrate for supervised persons the types of reporting required, such as: noncompliance with applicable laws, rules, and regulations; fraud or illegal acts involving any aspect of the firm's business; material misstatements in regulatory filings, internal books and records, clients records or reports; activity that is harmful to clients, including fund shareholders; and deviations from required controls and procedures that safeguard clients and the firm.

4. *Advice of Counsel.* Advisers may wish to encourage their supervised persons to seek advice from the legal department with respect to any action or transaction which may violate the code and to refrain from any action or transaction with might lead to the appearance of a violation.

5. *Apparent Violations.* Advisers may consider requiring supervised persons to report "apparent" or "suspected" violations in addition to actual or known violations of the code.

6. *Retaliation.* Advisers may wish specifically to state that retaliation against an individual who reports a violation is prohibited and constitutes a further violation of the code.

G. **Sanctions.** The IAA recommends that the code warn supervised persons that any violation of the code may result in any disciplinary action that a designated person or group (*e.g.*, chief compliance officer, compliance committee) deems appropriate,

including but not limited to a warning, fines, disgorgement, suspension, demotion, or termination of employment. In addition to sanctions, violations may result in referral to civil or criminal authorities where appropriate.

H. **Further Information Regarding the Code.** The IAA suggests that the code provide information about where supervised persons may turn for additional information about the code or any other ethics-related questions. Advisers may wish to provide names and contact information of individuals, such as the chief compliance officer or members of an ethics or compliance committee, or information about written resources.

July 20, 2004

WESPAC ADVISORS, LLC

New Search Printer Friendly Calculate List Fees

Business Entity Information

Status:	Active	File Date:	10/15/2008
Type:	Foreign Limited-Liability Company	Entity Number:	E0645382008-5
Qualifying State:	CA	List of Officers Due:	10/31/2017
Managed By:		Expiration Date:	
NV Business ID:	NV20081353177	Business License Exp:	10/31/2017

Additional Information

Central Index Key:

Registered Agent Information

Name:	GREG CHRISTIAN	Address 1:	689 SIERRA ROSE DR STE A-2
Address 2:		City:	RENO
State:	NV	Zip Code:	89511
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

View all business entities under this registered agent

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers Include Inactive Officers

Managing Member - RENEE T SZU

Address 1:	519 17TH STREET 5TH FLOOR	Address 2:	
City:	OAKLAND	State:	CA
Zip Code:	94612	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Click here to view 11 actions\amendments associated with this company

Entity Actions for "WESPAC ADVISORS, LLC"

Sort by File Date • descending ascending order Re-Sort

1 - 11 of 11 actions

Actions\Amendments

Action Type: Annual List
Document Number: 20160480591-56 # of Pages: 1
File Date: 10/31/2016 Effective Date:
16-17

Action Type: Annual List
Document Number: 20150451677-58 # of Pages: 1
File Date: 10/13/2015 Effective Date:
15/16

Action Type: Annual List
Document Number: 20140701661-68 # of Pages: 1
File Date: 10/3/2014 Effective Date:
(No notes for this action)

Action Type: Annual List
Document Number: 20130554074-01 # of Pages: 1
File Date: 8/23/2013 Effective Date:
2013-2014

Action Type: Registered Agent Change
Document Number: 20130041441-80 # of Pages: 1
File Date: 1/22/2013 Effective Date:
(No notes for this action)

Action Type: Annual List
Document Number: 20120862022-95 # of Pages: 1
File Date: 12/24/2012 Effective Date:
2012-2013

Action Type: Annual List
Document Number: 20110792310-76 # of Pages: 1
File Date: 11/1/2011 Effective Date:
(No notes for this action)

Action Type: Annual List
Document Number: 20110796291-18 # of Pages: 1
File Date: 11/1/2011 Effective Date:
(No notes for this action)

Action Type: Annual List
Document Number: 20090693586-48 # of Pages: 1
File Date: 9/21/2009 Effective Date:
09-10

Action Type: Initial List
Document Number: 20080695805-23 # of Pages: 1
File Date: 10/22/2008 Effective Date:
08/09

Action Type: Application for Foreign Registration

Document Number: 00002049895-57 # of Pages: 1
File Date: 10/15/2008 Effective Date:
(No notes for this action)

Return to Entity Details for "WESPAC ADVISORS, LLC"

New Search

CONFIDENTIAL CLIENT PROFILE
Account Information
Answer all questions that apply

1. Account title (legal title as listed on investment management agreement) _____

2. Primary contact person/trustee Greg Carmony

3. Custodian Schwab Account # _____

4. Social Security/Tax ID Number Primary [redacted]

Secondary _____

Physical Address 11 Dee Ct, Smith NV 89430

Mailing Address P.O. Box 310

City Smith State NV Zip 89430

Phone 775 465-2981 Fax 775-465-2861

E-mail none

5. Account type

☐ Individual (taxable) ☐ IRA/IRA Rollover ☐ SEP

Account types listed below must enclose Plan Document, Partnership Agreement, Corporate Resolution, Trust Documentation, and/or Authorized Signature List.

☐ Irrevocable Trust	☐ Profit Sharing	☐ Endowment
☐ Revocable Trust	☐ Money Purchase	☐ Foundation
☐ Public Employee	☐ Defined Benefit	☐ Taft-Hartley
☐ Corporation (taxable)	☐ Limited Liability Company	☐ 401(k)
☐ S Corporation	☐ Partnership	☐ Other_____
☐ Non-Profit Corporation		

Initial Investment ☐ Cash $_____ or ☐ Cash/Securities* $_____

** Please list all securities with cusip or ticker symbol, purchase date and cost basis on Exhibit A.*

Anticipated contributions $_____ ☐ Monthly ☐Quarterly ☐Annually ☐ None

Anticipated withdrawals $_____ ☐ Monthly ☐Quarterly ☐Annually ☐ None

CONFIDENTIAL CLIENT PROFILE
Investment Objectives
(For all accounts)

1. What percentage of your total investable assets will WESPAC Advisors be managing (e.g., stocks, bonds)? 40 %

2. How long will these funds be committed to the stated purpose?

   ☐ Less than 3 years ☐ 3 – 5 years ☐ 10 years ☒ 10 years or more

3. State of legal residence Nevada

Please complete the following for all accounts except corporation; if corporate, proceed to page 5.

4. Date of birth 12/15/43 Spouse's date of birth _____

5. Occupation: Patent attorney

6. What year did you start your current occupation 1979 Projected retirement age 65

7. Spouse's Occupation * In divorce, leave out for planning purposes

8. What year did your spouse start current occupation ____ Projected retirement age ____

9. Annual income (combined if joint account). Check which applies:

[redacted]

For taxable accounts, please complete the following; if nontaxable, proceed to question 12.

10. Are you subject to (please check all that apply and indicate percentages):

    ☒ State Income tax? 0 % ☒ Alternative minimum tax? ? %

11. Marginal federal income tax bracket 35 %

12. Primary source of income: ☒ Occupation ☒ Investments ☐ Retirement funds

13. U.S. citizen? ☒ Yes ☐ No If no: A non-resident alien? ☐ Yes ☐ No

    Do you pay U.S. taxes: ☒ Yes ☐ No

14. Net worth (excluding primary residence) $ [redacted]

15. Spouse/Dependent

Name	Age	Relationship
None		

Wespac Advisors LLC Asset Management Services
Investment Policy Questionnaire

Introduction:

- The following series of questions are designed to develop a better understanding of your tolerance for investment risk.
- Understanding your tolerance for investment risk relative to your investment return expectations is an important first step in designing a portfolio.
- The answers you select will indicate your comfort level with investment risk and your ability to withstand it.
- Please carefully consider each question and select the answer that most closely fits your current situation.
- Consultation with your Investment Advisor while filling out this form is key to developing a recommended portfolio that fits your comfort level and is appropriate to reach your financial goals.

Instructions for completing this form:

- Please check the box next to each appropriate answer.
- The assigned points for each answer appear in red to left of the box.
- After the conclusion (Page 7), please add up the selected points for each question (1-15) and compare the total with the investment objective ranges on page 8. This is the investment objective that is consistent with your responses.

Date: 8/18/05 Financial Advisor _____

Family Information

Client$_1$ Name: Gregory O. Garmong 12/15/43
First M Last Birthdate

Client$_2$ Name: _____ _____
First M Last Birthdate

Address: P.O. Box 310 Smith NV 89430 (775) 465-2981
Street City/St Zip Code Telephone

Current Assets: $[redacted]

Please specify the type of account:
☐ A. Taxable, Individual
☒ B. Tax exempt, Individual Mostly

Risk Tolerance Profile

1. Risk Factor

Before you make a decision on any investment, you need to consider how you feel about the prospect of potential loss of principal. This is a basic principle of investing: *the higher return you seek, the more risk you face.* Based on your feelings about risk and potential returns, your goal is to:

Question 2, Answer B is my goal

15 ☐ A. Potentially increase my portfolio's value as quickly as possible while accepting higher levels of risk.
9 ☐ B. Potentially increase my portfolio's value at a moderate pace while accepting moderate to high levels of risk.
6 ☐ C. Income is of primary concern while capital appreciation is secondary.
3 ☐ D. The safety of my investment principal.
x E. Moderate growth, low-moderate risk.

2. Investment Approach

Which of the following statements best describes your overall approach to investing as a means of achieving your goals?

3 ☐ A. Having a relative level of stability in my overall investment portfolio.
6 ☒ B. Moderately increasing my investment value while minimizing potential for loss of principal.
9 ☐ C. Pursue investment growth, accepting moderate to high levels of risk and principal fluctuation.
15 ☐ D. Seek maximum long-term returns, accepting maximum risk with principal fluctuation.

3. Volatility

The value of most investments fluctuates from year to year as well as over the short term. How would you feel if an investment you had committed to for ten years lost 20% of its value during the first year?

1 ☐ A. I would be extremely concerned and would sell my investment.
3 ☒ B. I would be concerned and may consider selling my investment.
5 ☐ C. I would be concerned, but I would not consider selling my investment.
7 ☐ D. I would not be overly concerned given my long-term investment philosophy.

4. Variation

Realizing that any market-based investments may move up or down in value over time, with which of the hypothetical portfolios below would you feel most comfortable?

	Year 1	Year 2	Year 3	Year 4	Year 5	Average Annual Return
1 ☐	3%	3%	3%	3%	3%	3%
3 ☐	2%	5%	6%	0%	7%	4%
5 ☐	-6%	7%	21%	2%	8%	6%
7 ☒	9%	-11%	26%	3%	18%	9%
10 ☐	14%	-21%	40%	-4%	31%	12%

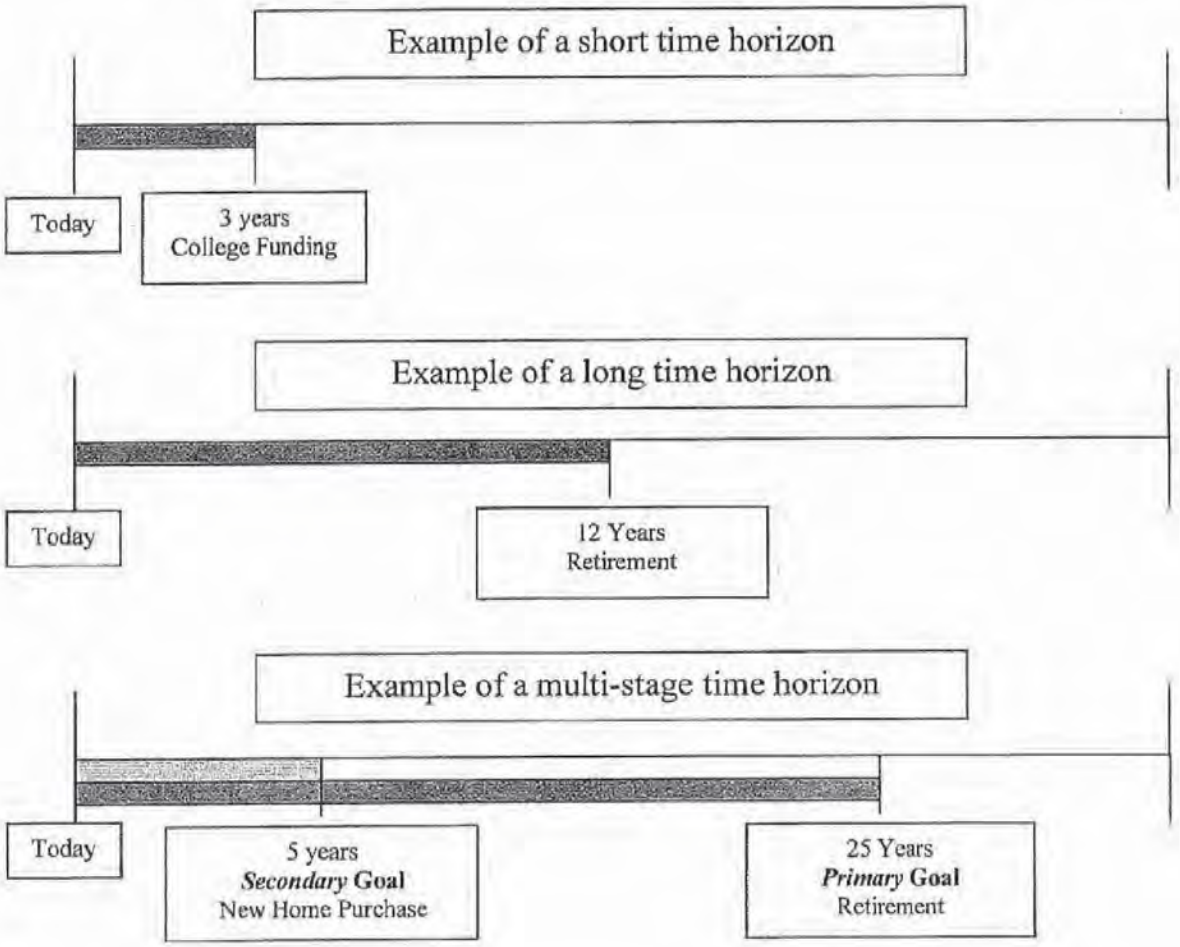
5. Investment Experience

Please select the type of security with which you have had the ***most*** investment experience?

2 ☐ A. U.S. Government securities
4 ☒ B. Mid to high quality corporate fixed income securities
6 ☐ C. Stocks of older, established companies
8 ☐ D. Stocks of newer, growing companies

6. Time Horizon

An important consideration when making investment decisions is where you are in your financial life cycle and how long you have before you will need to start withdrawing the assets. Through consultation with your Financial Advisor, please indicate your portfolio's appropriate time horizon. A multi-stage time horizon would indicate that you have several goals in the future that your investment portfolio needs to address.



1 ☐ A. Short (3-5 Years)
3 ☒ B. Long (5-10 Years)
5 ☐ C. Multi-stage

7. Primary Goal

Please indicate approximately how many years from today until you reach your primary goal.

1 ☒ A. Within 1 to 5 years — Stard retirement - full reliance on investments for retirement
3 ☐ B. Within 5 to 10 years
7 ☐ C. Within 11 to 20 years
10 ☐ D. More than 20 years

8. Secondary Goal

Some investors have a multi-stage time horizon with several goals for their portfolio. Please indicate approximately how many years from today until you reach your secondary goal?

1 ☒ A. Not applicable, I only have a single stage time horizon.
4 ☐ B. Within 1 to 5 years
7 ☐ C. Within 5 to 10 years
10 ☐ D. More than 10 years

9. Age

What is your current age?

10 ☐ A. Under 35
8 ☐ B. Between 36 to 45
6 ☐ C. Between 46 to 55
4 ☒ D. Between 56 to 70
1 ☐ E. Over 70

10. Investment Earnings

Based on your current and estimated future income needs, what percentage of your investment earnings do you think you would be able to reinvest?

8 ☒ A. Reinvest 100 percent of my investment earnings. At least for a few years
5 ☐ B. Reinvest 20 to 80 percent of my investment earnings.
3 ☐ C. Reinvest 0% (receive all investment earnings for cash flow).
1 ☐ D. My investment earnings will not be sufficient and I will need to withdrawal principal.

11. Investment Value

Your portfolio design relates to your investment experience, which helps to determine your current investment philosophy. What is the current value of your total investment portfolio?

[redacted]

12. Living Expense

Given interruptions of periodic income or other unforeseen circumstances, some individuals are forced to tap their investment resources to meet living expenses. In such an instance, how many months of living expenses could be covered by your current liquid investments?

5 ☒ A. More than 12 months, or not a concern
3 ☐ B. Between 4 and 12 months
1 ☐ C. Less than 4 months, or already withdrawing

13. Household Income

Total earnings, which includes earned and investment income, is a requirement when assessing your risk tolerance and determining allocation of assets. What is your total annual household income (including interest and tax deferred income)

[redacted]

14. Income Saving

The percentage of your total income that you currently save is approximately:

1 ☐ A. I do not currently save any income.
3 ☐ B. Between 2% - 7%
6 ☐ C. Between 7% - 12%
9 ☒ D. Greater than 12%

15. Future Earnings

In the next five years, you expect that your earned income will probably:

1 ☒ A. Decrease
3 ☐ B. Stay about the same
5 ☐ C. Increase modestly
7 ☐ D. Increase significantly

Conclusion

Comments:
My goal is providing for retirement. I'm uncertain when I will fully retire. I expect in 2006 my income will be in the [redacted] range, but almost certainly decreasing after that to about [redacted] range if I continue to work. Don't expect to start drawing on retirement accounts for about 5 years.

To the best of my knowledge, the information contained in this investment policy questionnaire is both accurate and complete. I understand that any recommendations are based upon the information supplied by me.

Client Signature

8/18/05
Date

Client Signature

Date

INVESTMENT MANAGEMENT AGREEMENT

This Investment Management Agreement (the "Agreement") is entered into between WESPAC Advisors, LLC (.WA"), an investment advisor registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended, and Gregory Garmong ("Client"). In consideration of the mutual promises, covenants, representations, and undertakings set forth herein, the parties agree as follows:

1. **Appointment.** Client appoints WA as investment adviser of the Portfolio Assets (as hereinafter defined) with designated investment authority over the Portfolio Assets, and WA agrees to serve in that capacity on the terms and conditions as set forth in this Agreement.

2. **Acknowledgments of Client.** Client represents and acknowledges that Client is the sole owner of the cash and securities described in Exhibit A (the "Initial Portfolio Assets"), and that the Portfolio Assets are and will remain at all times during the continuation of this Agreement free, clear, and unencumbered. Client acknowledges that Client has reviewed the investment policies of WA as set forth in WA's Form ADV Part II, a copy of which has been provided to Client, and that these investment policies meet Client's overall criterias. In the event Client's financial situation changes, Client agrees to notify WA in writing of the change and new investment objectives, if different from those described. Client acknowledges that in the process of active portfolio management, cash may be held in the portfolio account at the discretion of WA. Client agrees to give WA immediate notice of any deposit to or withdrawal from the Portfolio Assets and to promptly confirm the same in writing.

3. **Procedures**. The following procedures shall be followed by WA in performing the services called for by this Agreement:

    1. **Records.** WA shall keep separate and accurate records of all of the Initial Portfolio Assets and additions to, dispositions from, and changes in the Initial Portfolio Assets (the "Portfolio Assets"). WA shall provide Client with a written summary and appraisal of the Portfolio Assets at least once each calendar quarter. The portfolio appraisal statement shall list the Portfolio Assets as of the last business day of the immediately preceding quarter, and shall indicate the fair market value of the Portfolio Assets on that date as determined in Paragraph 4a hereof.

    2. **Custody of Portfolio Assets.** The Portfolio Assets subject to WA's supervision will be maintained in street name in Client's account at Charles Schwab & Co., Inc. or at a brokerage house, bank, trust company, or other firm (the "Custodian") selected by Client as set forth in the attached Confidential Client Profile. Client shall be responsible for all Custodians' fees incurred in maintaining Client's account(s). In no event shall WA act as Custodian, and nothing herein shall be construed to authorize WA to take possession of any cash or securities comprising the Portfolio Assets. Client shall instruct the Custodian to provide WA with confirmations of all transactions with respect to Portfolio Assets and shall instruct Custodian to provide to Client a monthly account statement indicating all amount dispersed from Client's accounts (including the amount of any fee paid pursuant to Client's authorization to WA), all transactions occurring in the account during the

period covered by the statement and all the funds, securities, and other properties in the account as of the end of the period, with a copy to WA. Client shall instruct Custodian to provide WA with such other periodic reports concerning the status of the Portfolio Assets as WA may reasonably request. It is agreed that WA, in the maintenance of its records, does not assume responsibility for the accuracy of information furnished by Client or any other party.

3. **Brokerage.** Client may instruct WA to utilize the services of designated broker(s) in all transactions involving Portfolio Assets separately designated in Exhibit B. If no broker(s) is designated by Client for Portfolio Asset transactions, WA may select broker(s) , and such broker(s) may be broker(s) that provide research or other portfolio services to WA. In making any such selection, WA will take into consideration a number of factors including, without limitation: the overall direct net economic result to the Portfolio Assets (including commissions, which may not be the lowest available but which ordinarily will not be higher than the generally prevailing competitive range), the ability to effect the transaction where large block trades or other complicating factors are involved and the availability of the broker to stand ready to execute possibly difficult transactions in the future. WA may also take into consideration other matters involved in the receipt of brokerage and research services as contemplated by Section 28(c) of the Securities Exchange Act of 1934, as amended, and the regulations and interpretations of the Securities and Exchange Commission promulgated thereunder, without having to demonstrate that any such factor is of a direct benefit to the Portfolio Assets. If WA believes that the purchase or sale of a security is in Client's best interest along with the best interest of its other clients, WA may, but shall not be obligated to, aggregate the securities to be sold or purchased to obtain favorable execution or lower brokerage commissions, to the extent permitted by applicable laws and regulations. WA will allocate securities so purchased or sold, as well as the expenses incurred in the transactions, in the manner that it considers to be equitable and consistent with its fiduciary obligations to Client and its other clients.

Client shall be responsible for all brokerage charges in connection with the Portfolio Asset transactions. Brokers or dealers that WA selects to execute transactions may from time to time refer clients to WA. WA will not make commitments to any broker or dealer through brokerage or dealer transactions for client referrals; however, Client recognizes that a potential conflict of interest may arise between Client's interest in obtaining best price and execution and WA's interest in receiving further referrals.

4. **Services of Adviser.**

a. **Management Fee**. Client agrees to pay WA an investment management fee as determined in accordance with the schedule set forth as Exhibit A. One quarter of the annual fee due shall be payable in arear on the last day of each calendar quarter in which this Agreement is in force. All fees are determined on the basis of the market value of the Portfolio Assets as of the last day of the

calendar quarter. In computing the market value of any investment of the Portfolio Assets, each security listed on any national securities exchange shall be valued at the last quoted sale price on the valuation date on the principal exchange in which such security is traded. Any other security or asset shall be valued in a manner determined in good faith by WA to reflect its fair market value. If the account is opened after the start of a calendar quarter, the initial fee will be prorated from acceptance by WA through the end of the quarter. Notwithstanding the foregoing, for clients who request to have their fee calculated and determined by their Custodian, it is agreed that the fee will be calculated in the manner agreed upon with such Custodian. WA agrees to send a copy of the fee computation and billing, at least quarterly, to both Client and Custodian as required. In addition, Client will receive a portfolio appraisal as set forth in Paragraph 3. The fee schedule set forth in Exhibit B may be amended from time to time by WA upon thirty (30) days written notice to Client. If Client does not notify WA of termination within thirty (30) days of such notice, this Agreement will continue in effect under the terms and conditions as set forth herein with the revised fee schedule.

b. **Fee Billing Option.**

A) Client may authorize WA to invoice the Custodian for its fees, and Client may authorize the Custodian to pay such fees to WA directly from Client's account. WA will send a copy of its bill to Client prior to or at the time the original is sent to the Custodian.

B) Client may authorize WA to invoice Client directly for the payment of WA fees. Any such payment will be made by Client to WA by separate check and will not be deducted from amounts held in Clients account.

c. **Proxy Voting Option.**

WA is authorized to vote all proxies on behalf of the Portfolio Assets. Client will instruct the Custodian to forward all proxy materials to WA or its agent so that it may vote them accordingly. WA will report to Client at such time and in such manner as Client may reasonably request with respect to all proxy voting responsibilities exercised by WA for Client's account. Client may revoke WA's authority to vote proxies by notifying WA in writing of the revocation of the delegation of proxy voting authority.

[Please note that accounts subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, which choose this option must provide to WA a copy of Plan Documents showing that the right to vote proxies has been reserved to the trustees or other fiduciaries.]

5. **Discretionary Authority**. WA shall have designated full power and authority to make all investment decisions on a discretionary basis for Portfolio Assets, including decisions to buy and sell any domestic or foreign security, except to the extent Client provides written instructions limiting such authority. Although WA may make investment decisions without prior consultation with or further consent from Client, all such investment decisions shall be made in accordance with the

investment objectives of which Client has informed, and may inform, WA from time to time in writing. Client appoints WA as agent and attorney-in-fact to, and expressly authorizes WA in making its investment decisions to: a) make, order, and direct any and all transactions involving designated Portfolio Assets in Client's name and for Client's account and b) sell, convert, or exchange securities comprising part or all of the Portfolio Assets, to otherwise acquire and dispose of such securities; provided, however that nothing herein shall be construed to authorize WA to take custody or possession of any funds, securities or other property of which Client has any beneficial interest in any manner whatsoever. All transactions in Portfolio Assets will be done at WA's sole discretion and without obligation to first notify or consult with Client. Client agrees that WA will not advise or act for client in any legal proceedings, including bankruptcies or class actions, involving securities held or previously held as Portfolio Assets or the issuers of these securities.

6. **Representations of WA.** WA represents that it is registered with the Securities and Exchange Commission as an Investment Adviser under the Investment Advisers Act of 1940, as amended, and that such registration is currently in effect. If the Portfolio Assets are subject to ERISA, WA also acknowledges that it is a fiduciary as that term is defined in ERISA, with respect to the Portfolio Assets. In accordance with sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of WA and any partner, employee or agent of WA shall be limited to his, her or its duties in managing the Portfolio Assets, and WA shall not be responsible for any other duties with respect to Client (specifically including evaluating the initial or continued appropriateness of Client's retention of WA or the diversification standard under section 404(a)(1) of ERISA).

7. **Representations of Client.** Client confirms that it has full power and authority to enter into this Agreement, that the employment of WA is authorized by its governing document relating to the Portfolio Assets and that the terms hereof do not violate any obligation by which Client is bound whether arising by contract, operation of law, or otherwise, and that: a) this contract has been duly authorized by appropriate action and is binding upon Client in accordance with its terms; and b) Client will deliver to WA such evidence of such authority as it may reasonably require, whether by way of a certified resolution, trust agreement, or otherwise. Client further agrees to provide WA with copies of all documents governing the Portfolio Assets. If the Portfolio Assets are subject to ERISA, Client hereby represents and confirms to WA that Client's employment of WA as the Investment Adviser to the Portfolio Assets, and any instruction Client has given to WA, is authorized by and does not violate any provision of any applicable plan or trust documents. Client hereby acknowledges that Client is a "named fiduciary" with respect to the control and management of the assets of Client's account, a trust qualified under Section 401 (a) of the Internal Revenue Code of 1986, and Client agrees to notify WA promptly of any change in the identity of the "named fiduciary" with respect to the account. In addition, in any directed brokerage transaction Client has determined, and will monitor the Portfolio Assets to assure, that the directed broker is capable of providing best execution for the account's brokerage transactions and that the commission rates that have been negotiated are reasonable in relation to the value of the brokerage and other services received.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of CARL M. HEBERT, ESQ., and that on May 27, 2020, I

___X___hand-delivered

_____mailed, postage pre-paid U.S. Postal Service in Reno, Nevada

___X___e-mailed

_____telefaxed, followed by mailing on the next business day,

_____served through use of the court's electronic filing system pursuant Nevada EFCR 9(c),

a copy of the attached

JOINT APPENDIX VOL. 2

addressed to:

THOMAS C. BRADLEY, ESQ.
Bar No. 1621
435 Marsh Ave.
Reno, NV 89509
775-323-5178
tom@tombradleylaw.com

Counsel for defendants/respondents
WESPAC; Greg Christian

Carl M. Hebert

An employee of Carl M. Hebert, Esq.