



Securities Industry Association

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March 15, 2004

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Re: Investment Adviser Codes of Ethics
(Release Nos. IA-2209, IC-26337; File No. S7-04-04)

Dear Mr. Katz:

The Investment Adviser Committee (the "Committee") of the Securities Industry Association (SIA)¹ welcomes the opportunity to comment on the rule proposal described in the above referenced SEC release (the "Proposed Rule"). Our comments are principally focused on the application of the rule proposals to dually registered broker-dealer/investment advisers.

As a general matter, we view a Code of Ethics as an integral element of an overall effective compliance program by broker-dealers and investment advisers. We agree, as suggested by the proposal, that the Code of Ethics should set forth the standards of conduct expected of employees (including compliance with the federal securities laws), safeguard material nonpublic information about client transactions and effectively address potential conflicts of interest in personal securities transactions by employees, subject to the clarifications outlined below.

A. BACKGROUND

All SIA members are members of the NASD, and a substantial percentage are also NYSE members. As such, they are all subject to the jurisdiction of at least one, and often multiple self-regulatory organizations ("SROs")²

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 780,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated an estimated \$209 billion in domestic revenue and \$278 billion in global revenues. (More information about SIA is available on its home page: www.sia.com).

² These would include a variety of securities and options exchanges.

Nearly all SIA members are dually registered broker-dealer/investment advisers. In virtually all dual registrant situations, our members employ integrated compliance programs which provide unified oversight of both broker-dealer and investment advisory activities. From a policy standpoint, a Code of Ethics has equal applicability to both types of activities.

B. DISCUSSION OF RULE PROPOSAL

We recommend that any adopted rule clarify that dual registrants with integrated compliance programs may rely as well on an integrated Code of Ethics. The Staff recently recognized the integration by dual registrants of their compliance programs.³ We would also suggest permitting the Code of Ethics to be part of, and not necessarily distinct from, a firm's Compliance Manual, provided such manual addresses any matters that may be unique to advisory activities.

Personal Trading, Supervised and Access Persons

The personal trading provisions of the Proposed Rule contemplate many of the current requirements already implemented by dual registrants.⁴ Indeed, all dual registrant employees are required to obtain prior approval before opening an outside brokerage account or entering into a private securities transaction, and are generally prohibited from participating in offerings of public securities. Individual representatives are subject to the same supervisory reviews regardless of whether they are authorized to manage accounts or otherwise act as a broker. Client brokerage and managed accounts are deemed confidential and no representative is permitted to convey or use confidential client information for any purpose other than in service of that client. Dual registrants conduct surveillance to monitor for abuses of confidential client information such as "piggybacking" and "front-running" as well as violations of the federal securities laws.⁵ Those representatives who would be deemed "access" persons under the Proposed Rule are not necessarily required to pre-clear trades.⁶ We therefore believe that there should not be an effort to draw distinctions between "supervised" and "access" persons under the Proposed Rule, or to require pre-clearance of personal trades. Dual registrants should be able to design programs which incorporate the objectives of monitoring for conflicts and breaches of fiduciary and legal obligations without having to delineate whether an employee is a "supervised" or "access" person.

Periodic Reporting and Recordkeeping

The Proposed Rule also requires periodic reporting in the form of duplicate confirmations and monthly, periodic and/or annual statements of trading activities. This is consistent with the current practice of dual registrants. We agree that such reporting is necessary for the monitoring of potential abuses discussed above. However, we believe that the quarterly reporting in a single document of all transactions effected by an employee in the prior quarter to be redundant and overly burdensome.

³ See, Footnote 23 of the adopting release IA-2204: Final Rule for Compliance Programs of Investment Companies and Investment Advisers dated December 17, 2003 wherein it states "Advisers who are also registered as broker-dealers are not required to segregate their investment adviser compliance policies and procedures from their broker dealer compliance policies and procedures."

⁴ See, NYSE Rule 407, NASD Rules 3030, 3040 and 3050; IM2110-1 and NASD Proposed Rule 2790.

⁵ See, NYSE Rule 342.21 and NASD Rule 3010; NASD Rule 2110 and IM-2110-1, 2110-2 and 2110-3.

⁶ Certain other employees may be required to pre-clear transactions such as investment bankers, research analysts and others who may regularly receive material non-public information.

Moreover, employees of dual registrants are generally required to annually confirm compliance with current firm policies and procedures, including disclosure of all securities brokerage accounts, private securities transactions, and outside business activities.

The proposal to require that duplicate brokerage confirmations or account statements be maintained electronically in an accessible computer database would be extremely burdensome and costly to advisers. The majority of dual registrants receive hard copies of confirmations and account statements. Under current Rule 204-2(a)(12) and (13) of the Advisers Act, duplicate confirmations and account statements can substitute for transaction reports otherwise required, so long as any paper copies are organized so as to allow easy access to and retrieval of any particular confirmation or statement. Requiring advisers to input the information received via hard copy into a searchable database would impose an additional burden on the advisers with little practical value.

We also believe that the obligation to provide a statement that no transactions have been effected adds little value to the overall objective of monitoring for abuses. If employees are obligated to obtain prior approval for the maintenance of outside brokerage accounts, or private securities transactions, and to provide copies of all reports, failure to do so will subject an employee to disciplinary action by his or her employer. Reporting obligations will be reviewed and enforced at the time permission is granted by the employer. Other than as a trap for the unwary, it provides little practical value to require employees to report matters that cannot in any way disadvantage a client.

Reportable Securities and Affiliated Mutual Funds

The Committee is cognizant of the reported abuses in the trading of mutual fund shares that Staff is rightfully seeking to address, and further notes that investment management of a registered investment company can only be effected by a registered investment adviser. We are not aware that affiliates of fund managers including principal underwriters have been implicated in any of the investigations to date. We also note that most investment companies affiliated with dual registrants are generally segregated businesses which operate as separate reporting persons from the dual registrant affiliate under the federal securities laws. Investments in mutual funds, affiliated as well as unaffiliated, generally do not require the prior approval of, nor duplicate reporting to, dual registrants. Moreover, most investment advisers registered with the Securities and Exchange Commission do not manage mutual funds. Therefore, we believe that the Staff can best address potential abuses by fund investment management personnel through the Investment Company Act of 1940, and not through the broader application of the Investment Advisers Act.

C. SUMMARY AND CONCLUSION

The Committee supports the adoption of the Proposed Rule subject to the clarifications and modifications described above, including:

1. The adopting release or rule text, provide clarification similar to that provided with respect to the Compliance Programs rule (IA-2204) to the effect that dual registrants may comply with the rule through an integrated code of ethics document, or compliance manual, which addresses all of the requirements of the rule.

2. That separate oversight mechanisms not be required for supervised, as opposed to access persons. The committee believes that bifurcating supervisory oversight will actually weaken its effectiveness and efficiency, and firms should retain the flexibility to determine what, if any, circumstances should require trade pre-clearance.
3. That dual registrants be permitted to continue to utilize the current compliance regimen with respect to monitoring personal trading. Such procedures have worked well, and apply to all registered persons regardless of whether they are engaged in brokerage or advisory activities.

We appreciate your consideration of our comments on this important Proposed Rule. We trust that you will not hesitate to contact Michael D. Udoff of SIA staff at (212) 618-0509 if we may provide any additional information or assistance to you during this process.

Sincerely,

Eileen Ryan
Chair
SIA Investment Adviser Committee

cc: The Honorable William H. Donaldson
The Honorable Paul S. Atkins
The Honorable Roel Campos
The Honorable Cynthia A. Glassman
The Honorable Harvey Goldschmid
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