

May 8, 2024

Dear CCOs,

Rule 204A-1 of the Advisers Act provides that an adviser’s access persons must report certain of their personal securities holdings and transactions. Subsection (b)(3)(i) of the rule, however, provides an exception to these reporting requirements when an access person’s securities are held in accounts over which he or she had “no direct or indirect influence or control” (colloquially, “managed accounts”). On recent regulatory exams, we have seen the SEC specifically ask for evidence of access persons providing “written representation[s] to not having any direct or indirect trading authority, influence or control” over such managed accounts.

To determine the extent of an access person’s influence or control over an account, and applicable reporting requirements, the SEC suggests:

- obtaining information about a trustee or third-party manager’s relationship to the access person (i.e., independent professional versus friend or relative; unaffiliated versus affiliated firm);
- distributing periodic certifications to access persons and their trustees or discretionary third-party managers regarding the access persons’ influence or control over trusts or accounts;
- providing access persons with the exact wording of the reporting exception and a clear definition of “no direct or indirect influence or control” that the adviser consistently applies to all access persons; and
- requesting periodic reports on holdings and/or transactions made in the trust or discretionary account to identify transactions that would have been prohibited pursuant to the adviser’s code of ethics.

Please reach out to any member of the Orical team if you need assistance in conducting initial or periodic due diligence on any reported managed accounts to confirm compliance with the rules and guidance set forth above.

Please contact Orical to discuss any of your regulatory, operational, or compliance concerns, at info@orical.org or (212) 257-5790.