

## Code of Ethics Considerations (Part I)

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Rule 204A-1 under the Investment Advisers Act (IAA) requires an investment adviser registered as such with the Securities and Exchange Commission (SEC) under the IAA to establish, maintain, and enforce a written code of ethics that includes, among other things, provisions that require:

- all of the adviser's "access persons" (as defined Rule 204A-1(e)(1) [1]) to provide the adviser certain personal **securities** holdings and **securities** transaction reports at the various times specified in the rule (unless one of the limited exemptions from such reporting requirements is available under Rule 204A-1(b)(3) or Rule 204A-1(d));
- the adviser to review such personal holdings and transaction reports;
- all of the adviser's "supervised persons" (as defined in Section 202(a)(25) of the IAA[2]) to comply with applicable "Federal securities laws" (as broadly defined in Rule 204A-1(e)(4)); and
- all of the adviser's "access persons" to obtain the adviser's approval before they directly or indirectly acquire beneficial ownership in any **security** in an "initial public offering" or in a "limited offering" (unless the limited exception from such approval requirement is available under rule 204A-1(d)).

An "initial public offering" is an offering of **securities** registered under the Securities Act of 1933 (Securities Act), 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 (Exchange Act).

A "limited offering" is an offering of **securities** that is exempt from registration under the Securities Act pursuant to Sections 4(a)(2) or 4(a)(5) of the Securities Act or pursuant to Rules 504 or 506 of Regulation D under the Securities Act.

## Securities Holdings Reports

Securities **holdings** reports must include, among other things:

- 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; and

- 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.

## Securities Transaction Reports

Securities **transaction** reports must include (among other things) 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:

- 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; and
- the name of the broker, dealer, or bank with or through which the transaction was effected.

So, the reporting and pre-clearance requirements mandated by Rule 204A-1 revolve around the terms "**security**" and "**reportable security**."

- The term "**security**" is not defined in Rule 204A-1, but it is defined very broadly in Section 202(a)(18) of the IAA.
- Rule 204A-1(e)(10) defines the term "**reportable security**" to mean any "**security**" (as defined in Section 202(a)(18) of the IAA), with certain limited exceptions that do not apply to crypto assets as such.

## The Issue

If a registered adviser permits its access persons to invest/trade in crypto assets, the adviser must determine whether such assets are **securities** that must be included within the scope of its Code of Ethics for purposes of:

- holdings reports and transaction reports; and
- pre-clearance of purchases of securities issued in "initial public offerings" and "limited offerings."

## The Solution?

Our next post will address potential solutions to this issue.

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[1]Rule 204A-1(e)(1) defines an "access person" of an SEC-registered investment adviser as each of the adviser's "supervised persons" (see note 2 below) who (1) 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** (2) is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic. In addition, if providing investment advice is the adviser's primary business, all of the adviser's directors, officers and partners are presumed to be "access persons."

[2]Section 202(a)(25) of the IAA defines "supervised person" to mean any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser."

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